

**OFFICIAL INFORMATION\*\*CONFIDENTIAL\*\*EVIDENCE CODE SECTION 1040  
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: June 24, 2020

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: LAW ENFORCEMENT-RELATED INJURY 036-19 FOR 6/30/20  
CLOSED-SESSION AGENDA

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On (X) Off ( )</u>	<u>Uniform-Yes (X) No ( )</u>
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Newton	7/31/19	9:07 a.m.		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Garcia, A./PO III	13 years, 2 months
Cunningham, D./PO I	7 months
Lassak, M./PO I	8 months

**Total Involved Officer(s)**

1 x Sgt. I  
1 x PO III  
3 x PO I

<u>Suspect</u>	<u>Deceased ( )</u>	<u>Wounded (X)</u>	<u>Non-Hit ( )</u>
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Roosavelt Mullen: Male Black, 52 years of age.

**COP Recommendations**

**Tactics** – Administrative Disapproval Officer Garcia. Tactical Debrief, Sergeant Tuialii, along with Officers, Cunningham, Lassak, and Vogel.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers Garcia and Cunningham.

**Non-Lethal Use of Force** – In Policy, No Further Action, Officers Garcia, Cunningham, and Lassak.

**IG Recommendations**

**Tactics** – Same as COP.

**Drawing/Exhibiting** – Same as COP.

**Non-Lethal Use of Force** – Same as COP.

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## **INVESTIGATION**

### **Annotated Force Investigation Division (FID) Incident Summary<sup>1</sup>**

**Synopsis:** Newton Patrol Division uniformed police officers responded to a radio call of a man assaulting a woman. The officers contacted the suspect and attempted to take him into custody. The suspect resisted the officers, causing the officers to utilize body weight, physical force, a wrist lock and a punch. The suspect was then taken into custody. A Rescue Ambulance (RA) was called due to a visible injury to the suspect's shoulder. The suspect was transported to University of Southern California Medical Center (USCMC) and was admitted the following day for Rhabdomyolysis.<sup>2</sup> Ultimately, the admitting physician could not rule out if the use of force was a contributing factor to the Rhabdomyolysis.

### **Investigative Summary**

On Wednesday July 31, 2019, at approximately 0900 hours, Witness Angela M.<sup>3</sup> and her husband, Roosavelt Mullen,<sup>4</sup> entered the convenience store of the Mobil Gas Station at 254 West Slauson Avenue. According to Angela M., she and Mullen were having a verbal argument regarding being turned away from a homeless shelter due to Mullen's refusal to take his medication. The argument caused Angela M. to become fearful of Mullen. She attempted to flee from Mullen inside the Mobil Gas Station; however, Mullen followed her (Investigators' Note No. 1).

According to the Mobil store clerk, Cook Ahn, he was behind the glass encased counter, when Angela M. entered the store and requested for him to call the police.<sup>5</sup> Mullen then entered the store and grabbed Angela M. by her shoulders and attempted to grab her phone. Ahn observed this and called 911.

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<sup>1</sup> The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

<sup>2</sup> Rhabdomyolysis is the breakdown of muscle tissue that leads to the release of muscle fiber (Myoglobin) contents into the blood. It is then filtered out of the body by the kidneys. Myoglobin breaks down into substances that can damage kidney cells.

<sup>3</sup> Angela M. and Roosavelt Mullen have been involved in a dating relationship for approximately one year and married for 30 days prior to the date of the incident. They have no children in common. The identity of domestic violence victims is kept confidential; therefore, the victim in this incident will be referred to as "Angela M." in the FID report.

<sup>4</sup> Suspect Roosavelt Mullen, Male, black, 6' tall, 190 pounds, 52 years of age, CII A08113408.

<sup>5</sup> Witness Cook Ahn was listed as Seung Ahn in the original arrest report.

Surveillance video from the Mobil captured Mullen punch Angela M. on the right side of her face with a closed fist and pull her wig off her head.<sup>6</sup> According to Angela M., she attempted to call 911 on her cellphone; however, Mullen grabbed the phone from her. As Mullen attempted to leave the store, Angela M. grabbed his shirt, causing Mullen to struggle out of his shirt and run out of the store shirtless.

Mullen fled from the store west on West Slauson Avenue, on the south sidewalk, and Angela M. ran after him. Ahn, still on the phone with 911, reported that the couple had left the store but were physically fighting with each other in the street. Ahn described Mullen to the 911 operator as a Black male, wearing no shirt and blue jeans.

Mullen continued west from the Mobil Gas Station, with Angela M. behind him, then south into the east portion of the parking lot of So-Cal Tires & Wheels, located at 5826 South Olive Street.

Surveillance video from So-Cal Tires & Wheels captured Mullen walking west from an adjacent parking lot into the east driveway, then walk south along the east side of the tire store.<sup>7</sup> Mullen entered a small room with a yellow door on the east side of the building, just before the officers' arrival.<sup>8</sup>

At approximately 0902 hours, in response to the 911 call, Communications Division (CD) broadcast the following radio call: *"415 man assaulting a woman, 254 West Slauson Avenue, 254 West Slauson Avenue. Inside the Mobile Gas Station Store. Suspect male Black, stand by for additional. Code Three, Incident number 1744, RD 1383."*

At approximately 09:02:44 hours, Newton Patrol Division uniformed Police Officer III Andrew Garcia, Serial No. 38133 (driver), and Police Officer I Darrell Cunningham, Serial No. 43884 (passenger), assigned Unit 13A85, were assigned the radio call.<sup>9</sup> The

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<sup>6</sup> The investigation revealed the time stamp on the Mobil surveillance video was approximately five minutes behind real time.

<sup>7</sup> The investigation determined the timestamp on the surveillance video from So-Cal Tires & Wheels was approximately one minute and 11 seconds ahead of real time.

<sup>8</sup> Surveillance video of the tire shop captured Mullen entering the storage room holding a grey backpack. Officers later recovered the backpack from inside the storage room, and it was given to Angela M. at scene by Officer Garcia.

<sup>9</sup> Officer Garcia, 40 years of age, five feet, six inches tall, 145 pounds, 13 years and two months with the Department. Officer Cunningham, 27 years of age, five feet, 10 inches tall, 175 pounds, seven months with the Department. Officers Garcia and Cunningham were operating a marked black and white police vehicle, Shop 81461, which was equipped with a Digital In-Car Video System (DICVS). Both officers were equipped with ballistic vests, a Department-approved pistol, handcuffs and canisters of Oleoresin Capsicum (OC) spray attached to their Sam Browne equipment belts. At the time of the incident, both officers had a Model X26 TASER in a holster on their person. Officer Cunningham was equipped with a side handle and a Hobble Restraint Device (HRD). Both officers were equipped with their BWVs which were attached to the front right pocket of their uniform shirts.

officers responded Code Three to the location and activated their Body-Worn Video (BWV) cameras (Investigators' Note No. 2).

**Note:** Officers Garcia and Cunningham had worked together for approximately four weeks. According to Officer Garcia, the officers determined that Officer Garcia would assume the role of the contact officer while Officer Cunningham would be responsible for the deployment of less-lethal devices. While en route to the call, Officer Garcia's BWV captured him advising Officer Cunningham that, in the event they saw the suspect, they would immediately detain him.

At approximately 09:04:13 hours, while the officers were en route, CD broadcast the following additional information: *"13A85, additional on your call at 254 West Slauson Avenue, the suspect and victim are now in the middle of the street fighting. Suspect male Black, no shirt, wearing blue jeans assaulting a female Black. Additional on Incident 1744."*

At approximately 09:04:56 hours, as officers neared the location, Officer Cunningham broadcast to CD that they were Code-Six.<sup>10</sup> As they approached the location, Officer Garcia observed Angela M. at the southwest corner of Broadway and Slauson Avenue, flagging them down near the east driveway of the tire shop. As Officers Garcia and Cunningham approached Angela M., the audio from their BWVs and DICVS captured Angela M. state, *"He just ran over there! In that tire company!"*<sup>11</sup>

As Officer Garcia drove his vehicle into the east side of the property of So-Cal Tires & Wheels, a witness, later identified as Edgar Molina, pointed toward the southeast portion of the property. Officer Garcia parked their vehicle faced in a southwest direction.

**Note:** The officers did not broadcast their updated location at the tire shop to CD nor did they update their status on their MDC.

According to Officer Cunningham, he believed Officer Garcia updated their location as officers exited their vehicle.

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<sup>10</sup> According to Officer Cunningham, he also used the Mobile Data Computer (MDC) to place themselves Code Six.

<sup>11</sup> During this time, CD received an additional 911 call from a female citizen identified as Angela M. who advised that Mullen was in a tire shop and that the police had arrived at scene.



*The above photograph depicts the area where the use of force occurred.*

Officers Garcia and Cunningham exited their police vehicle and began to search for Mullen on the east side of the business. Officer Garcia unholstered his pistol to a one-hand low ready position. According to Officer Garcia, he was unaware if Mullen may be armed. Regarding his decision to unholster, Officer Garcia stated, *"Didn't know what type of individual we were dealing with. And when we - - when we clear a corner or any type of residence or location, we always want to unholster just in case there's any type of any threat of danger."*<sup>12</sup>

According to Officer Garcia, he stood behind a parked sedan to visually clear an area next to a U-Haul type truck that was parked in the east corner of the lot. Once the area around the parked truck was visually cleared, officers walked around to the west side of the truck to continue clearing that corner of the lot. Officer Garcia directed Angela M. to stay by their police vehicle as they walked south.

Officer Cunningham unholstered his pistol to a two-hand low ready and walked south, followed by Officer Garcia, toward a closed yellow door on the east side of the building. According to Officer Cunningham, *"I unholstered because he - - the radio -- because the comments of the radio call. He was a man who assaulted a woman, and we didn't know if that was with weapons. That wasn't really described. And then the area, we - - we didn't know if in that area there were any weapons that he was hiding."*<sup>13</sup>

Officer Garcia's BWV captured him asking Molina where the suspect was, and Molina pointed to the east corner of the lot. According to Officer Garcia, he was unsure if Mullen was hiding, and his BWV captured him directing Officer Cunningham to call Mullen out. Officer Cunningham's BWV captured him state, *"Hey come out. Come out*

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<sup>12</sup> Officer Garcia's statement, Page 19, Lines 14-18.

<sup>13</sup> Officer Cunningham's statement, Pages 13-14, Lines 24-4.

*with your hands up where we can see them. Come out right now.”* According to Officer Garcia, there was no response to these commands.

Officer Garcia’s BWV captured Officer Cunningham visually searching the area in the southeast corner of the lot. Officer Garcia asked if Officer Cunningham could see anyone, and Officer Cunningham shook his head no. Officer Cunningham then holstered his pistol. Officer Garcia directed Officer Cunningham to clear the corner of the lot, and Officer Cunningham once again unholstered his pistol.

Before passing the threshold of the yellow closed door, Officer Garcia directed Officer Cunningham to check what he believed to be a bathroom.<sup>14</sup> As captured on his BWV, at approximately 09:06:36 hours, Officer Cunningham approached the closed yellow door on the east side of the garage. While holding his pistol in his right hand, Officer Cunningham pushed the door open with his left hand, exposing Mullen, who was seated on the ground with his legs pointed south and his feet crossed.

**Note:** Officer Cunningham’s arrest report erroneously stated that this door was partially open.

Officer Cunningham’s BWV captured him direct Mullen, *“Come out here...Stand up. Stand up. Face away from me. Show me your hands!”* Officer Garcia holstered his pistol and approached to the left of Officer Cunningham. Officer Garcia stood approximately ten feet from the doorway, as his BWV captured him state to Mullen, *“Get out here...come here...stay down.”* Officer Garcia directed Officer Cunningham to holster his pistol, which he did.

Officer Garcia’s BWV captured Mullen momentarily raise his hands, then place his hands onto the ground to his left, and slide his hips closer to the threshold of the door. Officer Garcia stated to Mullen, *“Stay down, stay down, come down.”* Mullen ultimately laid on his back with his legs outstretched inside of the room while his head, torso, and arms, extended outside of the room.

***The following description of the officers’ use of force was based on surveillance video and BWV of the incident. The surveillance video obtained in this investigation did not contain audio. Therefore, any statements used in the following section were gleaned from BWV unless otherwise noted.***

Officer Cunningham moved to Mullen’s right side, used his left hand to grip Mullen’s right wrist and his right hand to hold onto Mullen’s right elbow. Officer Garcia used both

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<sup>14</sup> The investigation determined this space to be the compressor storage room. The dimensions of the room were approximately 5 feet wide and 7 feet long, totaling approximately 35 square feet.

of his hands to grab Mullen's left wrist. Officers then pulled Mullen until his legs were entirely out of the storage area.<sup>15</sup>

**Note:** According to Officer Garcia, he advised Officer Cunningham, *"Let's grab him. Let's pull him out."*<sup>16</sup> However, these statements were not captured on officers' BWVs.

According to their arrest report, Officers Garcia and Cunningham gave verbal commands to Mullen to roll over onto his stomach; however, these commands were not captured on either officers' BWV. Officer Garcia's BWV captured him state to Officer Cunningham, *"Roll him over."* Officer Cunningham's BWV capture him state, *"Roll."*

According to Officer Garcia, his intention was to handcuff Mullen and detain him for a battery or assault investigation. Regarding the decision to place hands on Mullen, Officer Garcia stated, *"Once I felt he was out enough of the storage room, I wanted to go hands on. I didn't want to continue asking, hey, keep coming, I'll keep coming out. Potentially, my thinking was the further out he gets, the more opportunity and more space he has to get on his feet and potentially either try to run away or engage us in any type of fight. So, and I - - as soon as I felt he was out just enough where I felt comfortable to go hands onto try to get him in handcuffs, that's - - that's why I did it right away."*<sup>17</sup>

According to Officers Garcia and Cunningham, Mullen initially appeared to by complying with their commands. Once Mullen was moved from the doorway, Officer Cunningham held Mullen's right forearm and right wrist with both hands. Officer Garcia used both of his hands on Mullen's left wrist and first attempted to roll Mullen toward his left side. According to Officer Garcia, Mullen immediately "tensed up" and did not allow the officers to place him onto his stomach.

Officer Cunningham gripped Mullen's left bicep/triceps with both hands and rolled Mullen onto his right side, and onto his stomach. Officer Garcia lost his grip on Mullen's left arm as Officer Cunningham rolled Mullen onto his stomach. According to Officer Garcia, Mullen tensed his arms, which became very rigid.

**Note:** In reviewing the officers' BWV, it appeared that Mullen may have mumbled, *"I'm disabled, (indiscernible)...disabled"* at this time. Officers Garcia and Cunningham did not mention hearing Mullen's statement about being disabled in their respective interviews.

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<sup>15</sup> Officer Cunningham estimated they moved Mullen approximately five to seven feet. Officer Garcia estimated they moved him approximately ten feet.

<sup>16</sup> Officer Garcia's statement, Page 21, Line 13.

<sup>17</sup> Officer Garcia's statement, Page 58, Lines 15-25.



The officers positioned Mullen face down with the intention of placing his hands behind his back to handcuff him. Mullen bent his left arm and placed it close into his upper body. As Officer Cunningham attempted to pull Mullen's left arm out, he placed his right knee on Mullen's back and applied body weight. Officer Cunningham placed his right hand on Mullen's left triceps and used his left hand to grab Mullen's left wrist.

As Officer Garcia gripped Mullen's right arm, near the wrist, he positioned himself on Mullen's right side as Mullen appeared to bend his arm toward his head. Officers Garcia and Cunningham ordered him to, "*Stop moving.*" According to Officer Cunningham, "*It seemed like he's trying to tuck it (right arm) under his - - under his chest or under his stomach.*"<sup>18</sup>

Officer Garcia placed his left knee on the center of Mullen's back and his right leg on the ground to Mullen's right side, as he applied his body weight while attempting to hold onto Mullen's right wrist with both hands. As Mullen continued to resist, Officer Cunningham pulled up on Mullen's left arm. Mullen rolled onto his right side and continued to resist officers by moving his arms, refusing to be handcuffed. Officer Garcia's left knee slid off Mullen's back and onto the pavement, and he momentarily lost his grip on Mullen's right wrist.

Mullen was able to pull his right arm back in toward his head when Officer Garcia lost his grip. Officer Garcia removed his radio with his left hand, as he reacquired a grip on Mullen's right wrist with his right hand. Mullen was able to turn over on to his back, facing up at the officers. As Mullen rolled on to his back, Officer Cunningham placed his knees on the ground on both sides of Mullen, straddling his hips. Additionally, as Mullen was rolling over, Officer Garcia applied body weight with the left side of his upper torso laid across Mullen's upper chest. At approximately 09:07:11, Officer Garcia broadcast, "*85, let me get a backup. I need a backup, I'm going to be on Slauson, we're gonna be on a - - stop moving!*"

Officer Cunningham continued to hold on to Mullen's left wrist with his left hand and was able to pin Mullen's arm down across Mullen's chest.

Officer Garcia momentarily placed his radio down onto the ground, switched his hand position to re-grip Mullen's right wrist with his left hand, pinning it in a bent position near Mullen's head. Officer Garcia then picked up the radio with his right hand. At approximately 09:07:21 hours, Officer Garcia broadcast, "*85, I need a backup, Broadway/Slauson. We're gonna be, uh, west of Broadway.*" Officer Garcia then placed his radio back on the ground as he continued to struggle with Mullen.

**Note:** Investigators determined that Officer Garcia's second broadcast updating his location was "stepped on" by CD re-broadcasting the original backup request. Officer Garcia's broadcast could be heard on the CD

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<sup>18</sup> Officer Cunningham's statement, Page 23, Lines 16-18.

audio file obtained for this investigation but was not broadcast over Newton Base Frequency.

Cunningham repositioned himself to the right side of Mullen. Officer Cunningham released Mullen's wrist and used his right hand on Mullen's left elbow to begin pushing the elbow across Mullen's body, and grabbed Mullen's jeans near his left knee, to roll Mullen onto his stomach. Officer Cunningham then placed his right hand on the back of Mullen's left shoulder and completed rolling Mullen face down on to his stomach. Once Mullen was face down, Officer Cunningham placed his left knee on Mullen's lower back and applied body weight.

**Note:** An analysis of surveillance video determined that Officer Garcia's radio was placed on the ground near his leg, within his reach, for a period of approximately 22 seconds.

As Officer Cunningham struggled to control Mullen's left arm, Mullen was able to momentarily roll on to his right side, bending his left arm, pulling it in near his torso. Officer Garcia ordered Mullen, *"Give me your hand."*

Officer Cunningham was able to reacquire his grip on Mullen's left wrist and forearm, and pull it behind his back. Simultaneously, Officer Cunningham placed his right knee on Mullen's upper back, applying body weight. Officer Garcia advised Officer Cunningham to watch Mullen's hand to ensure it did not go near his waistband. Once Mullen's left arm was behind his back, he rolled back on to his stomach, face down. With his left hand, Officer Cunningham applied a wrist lock to Mullen's left wrist, while removing his handcuffs with his right hand. Officer Cunningham then placed one handcuff on Mullen's left wrist.

Officer Garcia placed his left knee on Mullen's upper back area and applied body weight. Officer Garcia continued his grip on Mullen's right wrist and picked up his radio with his right hand. At approximately 09:07:54 hours, *Officer Garcia broadcast, "85, I need a backup I'm on... uh Slauson we're gonna be west of Broadway on the south side."*

**Note:** At approximately 09:07:55 hours, Officer Cunningham's BWV appeared to capture Officer Garcia's left knee on the back of Mullen's head for approximately two seconds before sliding off to the ground. This occurred at the approximate time of the above broadcast. According to Officer Garcia, he believed at this time his left knee was on Mullen's upper back area, and he never intentionally placed his knee on Mullen's neck or head.

Mullen kicked his legs and was able to lift his chest partially off the ground. As Mullen was lifting his torso off the ground, Officer Cunningham used his right hand to put body weight on Mullen's left shoulder; however, Mullen was still able to lift his head and torso slightly off the ground. As Mullen turned his head to the right toward Officer Garcia,

Officer Cunningham placed his right hand on the back of Mullen's head and applied body weight for approximately two seconds. Simultaneously, Officer Garcia ordered Mullen to stop moving.

Officer Cunningham then began to assist Officer Garcia to place Mullen's right arm behind his back. Officer Garcia was able to straighten Mullen's right arm, using both his hands on Mullen's right wrist as he began to pull it toward Mullen's back. Officer Garcia ordered Mullen to stop moving and stop resisting. Meanwhile, Officer Cunningham used his right hand on Mullen's right forearm to assist with this motion. However, Mullen pulled his right arm in toward his chest while rolling his body to his left side. According to Officer Cunningham, Mullen became rigid and tensed up his body as he tucked his right hand under his torso area.

Officer Garcia placed his right hand on the back of Mullen's right triceps and simultaneously placed his right knee on the back of Mullen's right shoulder, applying body weight. With these actions, Mullen was once again lying face down on the ground.

**Note:** At approximately 09:08:08, Officer Cunningham's BWV captured Officer Garcia's right knee, which appeared to be on Mullen's neck and upper right shoulder area. According to Officer Garcia, he believed at this time his right knee was on Mullen's upper back area; however, due to Mullen's movements he kept losing his balance on him. According to Officer Garcia, he never intentionally placed his knee on the back of Mullen's neck.

According to Officer Garcia, Mullen was not complying with commands and was actively resisting. Officer Garcia believed that Mullen was attempting to reach underneath his torso with his right hand, so he used his closed right fist and struck Mullen once in his upper back. According to Officer Garcia, *"I wanted to give him a distraction strike to try to get him to release the tension or not be so tight, maybe focus on that distraction strike where even if it's just for a quick second, I could maintain full control of his arm and get it behind his back."*<sup>19</sup>

**Note:** According to Witness Morales-Borgen, who was standing approximately 30 feet away, he observed Officer Garcia strike Mullen once on the left shoulder.

According to Officer Garcia, after the distraction strike, he felt Mullen release the tension in his right arm, which enabled them to place the right arm behind Mullen's back.

Officer Garcia placed his right forearm between Mullen's shoulder blades and neck, while using body weight to control Mullen. Officer Cunningham then handcuffed Mullen's right wrist. Officer Garcia placed his left knee on Mullen's right upper back,

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<sup>19</sup> Officer Garcia's statement, Pages 37-38, Lines 25-5.

and Officer Cunningham placed his right knee on Mullen's middle back. Officers maintained body weight on Mullen until back-up units arrived.

**Note:** An analysis of the BWV determined that from the time officers first grabbed Mullen's arms, to the time Officer Cunningham applied the second handcuff, approximately one minute and 15 seconds had elapsed.

**OIG Note No. 1:** *Video evidence shows that Officer Garcia's knee was positioned in the area of Mullen's upper back, proximate to the back of Mullen's neck, for a period of approximately 40 seconds following the officers' completion of handcuffing. This evidence, however, does not reveal the precise positioning of the knee, and it is not sufficient to yield a conclusion regarding how much pressure was being applied by Officer Garcia or to which part(s) of Mullen's body pressure was being applied.*

*When Officer Garcia was asked in his FID interview where he was positioned relative to Mullen after handcuffing, he replied, "I think I'm still on his upper body [...] or, yeah, I'm near his upper body."<sup>20</sup> Officer Garcia further stated, "Once we got the second handcuff on [...] the resisting [...] pretty much diminished. So, at that point, I think I didn't have to use too much body weight on him anymore."<sup>21</sup> Later in the interview, in reference to his actions throughout the incident, Officer Garcia stated that he had never intentionally placed his knee on Mullen's head or neck.<sup>22</sup>*

At approximately 09:08:40 hours, the following uniformed Newton Patrol officers arrived at scene:

- Police Officer III Daniel Liem, Serial No. 39506, and Police Officer I Mathew Lassak, Serial No. 43859, Unit 13A41.
- Police Officer III Jordan Ornelas, Serial No. 38704, and Police Officer I Jeffrey Vogel, Serial No. 43873, Unit 13A63.
- Police Officers II Nicole Grant, Serial No. 42759, and John Tuason, Serial No. 38660, Unit 13Z1.

As the officers approached, Officer Garcia directed them to put out a Code Four. At approximately 09:09:00 hours, Officer Liem broadcast a Code Four.

**Note:** Officers Liem, Ornelas, Grant and Tuason were not interviewed by FID. The investigation determined that they were not present at the time of the use of force and they did not have physical contact with Mullen.

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<sup>20</sup> Garcia, Page 38, Line 22 – Page 39, Line 5.

<sup>21</sup> Garcia, Page 39, Lines 15 – 20.

<sup>22</sup> Garcia, Page 61, Lines 15 – 22.

At approximately 09:09 hours, Newton Patrol Division uniformed Sergeant I Saipele Tuialii, Serial No. 38343, assigned Unit 13L50, advised CD that he was Code Six at the incident.

Officer Cunningham conducted a pat down search of Mullen for weapons as Mullen laid face down on the ground. Officer Cunningham placed his right hand on the back of Mullen's neck and rolled Mullen to a seated position with his legs outstretched in front of him.

**Note:** An analysis of the BWV determined that from the time the second handcuff was applied to Mullen, to the time he was placed in a seated position, approximately one minute and 23 seconds had elapsed.

Officer Cunningham requested Mullen to stand up, but received no response. Officer Cunningham then placed his right hand under Mullen's left armpit and his left hand on Mullen's left bicep. Officer Lassak used both hands to grip Mullen's upper right arm. Officers Cunningham and Lassak lifted Mullen into a standing position as Officer Garcia commanded Mullen to stand up in order to walk him to his patrol vehicle; however, Mullen would not stand on his own (Investigators' Note No. 3).

In describing his observations of Mullen's reaction to the officers' attempt to stand him up, Officer Garcia stated, *"He just was complete dead weight. He let his body, it appeared like his body was going limp to avoid walking on his own."*<sup>23</sup>

As Officers Cunningham and Lassak lifted Mullen into a standing position, his torso bent forward. Officer Garcia used his right hand to push Mullen's upper chest back into an upright position and placed his left hand under Mullen's right armpit to assist in carrying him to the police vehicle.

**Note:** At approximately 09:09:43 hours, Officer Garcia's BWV captured him state, *"Let's drag his ass"* (Investigators' Note No. 4).

According to Sergeant Tuialii, he directed Officer Lassak to grab Mullen's legs. Officer Lassak lifted Mullen's legs and, along with Officers Garcia and Cunningham, they carried Mullen over to police Shop No. 81461. According to Officer Garcia, Mullen was resisting, moving his torso back and forth, making it difficult to hold him.

Sergeant Tuialii directed the officers to place Mullen on the ground and coordinated them placing Mullen into the back seat. Officer Garcia reacquired a grip under Mullen's right armpit, while Officers Lassak and Cunningham gripped under his left armpit as they lifted Mullen to a standing position. The officers placed Mullen in the back seat of the vehicle on his right side. Officer Vogel reached in from the right rear passenger area of the vehicle, grabbed underneath Mullen's armpits, and assisted in pulling Mullen across the rear seat, as Officer Cunningham gripped his jeans and pushed Mullen's

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<sup>23</sup> Officer Garcia's statement, Page 43, Lines 16-19.

legs into the vehicle. Officer Vogel then lifted Mullen's shoulders to place Mullen into a seated position and secured him with the seatbelt.

**Note:** Sergeant Tuialii and Officer Cunningham's BWVs captured Officer Garcia's left hand under Mullen's chin, for approximately one second, as he struggled to lift Mullen. According to Officer Garcia, he believed his left hand was on the back of Mullen's head and not his neck. He stated that his intent was to control Mullen's head while he reacquired his grip, to prevent Mullen from head butting him.

According to Garcia, he wanted to move Mullen to the vehicle because, *"I didn't want him on the ground anymore. I wanted to get him up off of the ground and inside to our black-and-white. I didn't want anymore - - another, or a second, possibly a second use of force to occur with him continuing to resist or not going on his own, so I wanted to just eliminate any potential further incident with the suspect."*<sup>24</sup>

At approximately 09:11:04, Sergeant Tuialii directed officers to request a Rescue Ambulance (RA) for Mullen, which Officer Grant did at approximately 09:11:37 hours. Angela M. was offered an RA for her injury; however, she refused. Los Angeles Fire Department, RA No. 833, Paramedic/Firefighters Abraham Cuervo and Daniel Nakamura responded to the scene and arrived at approximately 0915 hours. They assessed Mullen's condition and administered medical treatment. Nakamura and Cuervo then transported Mullen to the University of Southern California Medical Center (USCMC) for further medical treatment (Investigators' Note No. 5).

Officer Grant entered the RA and monitored Mullen, while Officer Tuason followed in their police vehicle. According the firefighter/paramedics, Mullen did not make any statements regarding the incident while being transported.

Officers Garcia and Cunningham remained at scene and completed their robbery investigation. Officer Garcia recovered and released Angela M.'s cellphone at scene. An Emergency Protective Order was issued to Angela M. and the officers returned to Newton Station. Officer Cunningham and Garcia completed a Combined Crime and Arrest Report for Robbery.

**Note:** Prior to completing their arrest report, the officers viewed their BWVs of the incident. At the time of viewing, the incident was being investigated as a Non-Categorical Use of Force (NCUOF).

On August 1, 2019, at approximately 0300 hours, Mullen's treating physician at USCMC, Doctor Liam Hilson, admitted Mullen due to elevated blood levels caused by Rhabdomyolysis.<sup>25</sup>

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<sup>24</sup> Officer Garcia's statement, Page 44, Lines 17-23.

<sup>25</sup> Mullen refused to sign an Authorization to Release of Medical Information form; therefore, no medical records were included with this investigation.

Due to the suspect being admitted to the hospital, Newton Day Watch Commander, Lieutenant I Edward Sun, Serial No. 30201, notified FID Lieutenant II Brian Reynolds, Serial No. 35772, of the incident. Lieutenant Reynolds requested that Lieutenant Sun have a supervisor respond to the hospital to speak with the physician and determine if Mullen's admittance to the hospital was due to the use of force.

**Note:** According to Sergeant Tuialii, Doctor Hilson's original assessment was that Mullen's condition was attributed to his agitated state of mind, drug use and overexertion, not the use of force.

On August 1, 2019, at approximately 1340 hours, Newton Patrol Division Captain I Hamed Mohammadi, Serial No. 36506, contacted Lieutenant Reynolds and advised that the attending physician would not rule out the use of force as a contributing factor to Mullen's Rhabdomyolysis. Lieutenant Reynolds advised Captain Mohammadi that FID personnel would respond to USCMC to conduct an on-scene assessment and meet with the physician, to determine if the incident met the criteria for a Categorical Use of Force (CUOF).

At approximately 1500 hours, FID Detective III James Goossen, Serial No. 26464 and Sergeant II Richard Brunson, Serial No. 32828, responded to USCMC and attempted to interview Mullen regarding the use of force and requested he sign an Authorization to Release Medical Information. Sergeant Brunson read the Miranda Admonition verbatim and Mullen refused to answer all questions and refused to release his medical information.

While at USCMC, Detective Goossen and Sergeant Brunson also met with Dr. Daniel Lee Johnson, who advised that he, along with Doctor Hilson, could not rule out if Mullen's elevated blood levels were related to the use of force. At approximately 1730 hours, FID detectives determined that the criteria for a CUOF had been met and assumed responsibility for the investigation.

At approximately 1750 hours, the Department Operations Center (DOC) was notified of the Law Enforcement-Related Injury (LERI).

The incident was initially handled by Sergeant Tuialii as a NCUOF investigation on July 31, 2019. Once it was determined that Mullen would be admitted to the hospital due to the use of force, this investigation was re-classified to a CUOF on August 1, 2019. Officers Garcia and Cunningham were telephonically notified by Lieutenant Sun on August 1, 2019 at approximately 1800 hours, and they were ordered not to discuss the incident until interviewed by FID personnel.

Force Investigation Division Detective II Jennifer Kim, Serial No. 36639, reviewed all documents and circumstances surrounding the separation and monitoring of the involved officers (Addenda Nos. 1 and 2 and Investigators' Note No. 6).

## **Scene Description**

The incident occurred in the eastern portion of the parking lot of 5826 South Olive Street, So-Cal Tire & Wheels. The paved area on the east side of the property had a large white truck parked facing south, with a dark sedan parked facing east behind it. The tire store structure consisted of three open garage bays on the north side, along with a door leading to a lobby area. On the east side of the building was a small storage room with a closed yellow door.

Directly east of the location was a parking lot with several parked vehicles. The Mobil Gas Station and convenience store, where the original radio call was generated, was located at 254 West Slauson Avenue.

The incident occurred outdoors at approximately 0907 hours, during daylight. The weather conditions were dry and clear.

## **Canvass For Witnesses**

On July 31, 2019, Newton Area personnel conducted a canvass of the immediate area for witnesses. Sergeant Tuialii interviewed Witnesses Angela M. and Edgar Molina and the interviews were captured on his BWV. Newton Patrol Division uniformed Sergeant I Brook Johnson, Serial No. 37298, also responded to the location to assist with the use of force investigation. Sergeant Johnson interviewed Witnesses Jose Borgen and Eduvigez Bernal and captured the interviews on his BWV. Witnesses Molina, Borgen, and Bernal were later re-interviewed by FID investigators. Those interviews were recorded, transcribed, and contained in this report.

According to the above witnesses, Mullen refused to comply with the officers and resisted them during the arrest.

**Note:** According to Witness Bernal, Mullen came out of the closed room voluntarily, and was standing when officers attempted to handcuff him.

Witness Ahn, the Mobil clerk who made the original 911 call, was initially interviewed by Officer Ornelas. Ahn remained inside the Mobil and was not a witness to the use of force. That interview was captured on his BWV. Ahn was later re-interviewed by FID investigators. That interview was recorded, transcribed, and contained in this report.

Two other witnesses to the altercation inside the Mobile gas station store, Ronald Fleming and William Ellet, were interviewed by Officers Ornelas and Vogel on the day of the incident. Those interviews were captured on the officers' BWVs. Force Investigation Division (FID) investigators telephonically contacted Fleming and it was determined that he did not witness the UOF; therefore, he was not interviewed. Investigators attempted to contact Ellet, with negative results.



**Note:** Surveillance video from the Mobil Gas Station captured Fleming and Ellet inside of the store after Angela M. and Mullen left and where they were also interviewed by Officers Ornelas and Vogel.

On August 14, 2019, FID detectives canvassed the area of Slauson and Broadway from 254 West Slauson Avenue to 5826 South Olive Street and were unable to locate any additional witnesses to the use of force.

### **Suspect Information**



Roosavelt Mullen was a male Black with black hair and brown eyes. He was identified by California Identification and Index (CII) No. A08113408. At the time of the incident, he was 6 feet tall, weighed 190 pounds, and was 52 years of age, with a date of birth of December 19, 1966. Mullen was homeless at the time of the incident. Mullen was not a documented member of a street gang and had no prior contacts with the Mental Evaluation Unit.

At the time of this incident, Mullen had prior convictions for Vandalism, Domestic Violence, Possession of a Controlled Substance, Evading a Peace Officer, Trespassing, Forgery, Grand Theft, and Vehicle Theft (Addendum No. 3).

On July 31, 2019, Mullen was arrested and absentee booked for 211 PC - Robbery, under Booking No. 5704479 and DR No. 1913-15994 (Addendum No. 4).

On August 1, 2019, Los Angeles County District Attorney's Office Deputy District Attorney Craig Rouviere referred the case to the City Attorney for misdemeanor filing consideration. Family Violence Division Deputy City Attorney Jina Kim rejected the case due to lack of sufficient evidence and declined prosecution.

Mullen remained in custody due to parole revocation warrant No. AH159503, issued from Inglewood court on February 17, 2019, which was from a July 2015 conviction for Corporal Injury on a Spouse.

### **Injuries**

At approximately 0911 hours, a RA was requested for Mullen due to an abrasion, approximately three inches in diameter, on the front of his left shoulder. No other visible injuries were observed.

Los Angeles Fire Department, RA No. 833, Paramedic/Firefighters Abraham Cuervo and Daniel Nakamura responded to the scene and arrived at approximately 0915 hours. They assessed Mullen's condition and administered medical treatment. Nakamura and Cuervo then transported Mullen to the University of Southern California Medical Center (USCMC) for further medical treatment.

Officers Garcia and Cunningham stated that they were not injured from the incident (Investigators' Note No. 7).

Angela M. was offered medical treatment at scene; however, she declined.

Upon his arrival at USCMC, Mullen was evaluated by Emergency Room physician Doctor Liam Hilson.

On August 1, 2019, at approximately 1730 hours, Doctors Hilson and Johnson confirmed to FID investigators that Mullen was going to be admitted as a result of Rhabdomyolysis, under Medical Record No. 100274927.

On August 6, 2019, Mullen was discharged from the hospital and was booked at the USCMC Jail Ward into the custody of Los Angeles Sheriff's Department (LASD).

On August 19, 2019, at approximately 1000 hours, a second attempt was made to interview Mullen regarding the incident at LASD Men's Central Jail. Mullen refused to speak to FID investigators regarding the use of force or sign a medical waiver to obtain medical information.

## **Evidence**

Angela M's cellphone, encased in a pink phone case, was recovered by Officer Cunningham from Mullen's pants pocket. It was photographed by Officer Cunningham and released to Angela M. at scene.

## **Visual Documentation**

**Photographs:** In conjunction with the Non-Categorical Use of Force (NCUOF) investigation, Sergeant Tuialii took digital photographs of Officers Garcia and Cunningham, the scene and Mullen's injury. Those photographs were stored at Technical Investigation Division (TID), Photographic Unit, under Control No. D312979.

On August 1, 2019, TID Photographer III Debra Davidian, Serial No. N6115, responded to the scene and photographed the scene at So-Cal Tire & Wheels and the Mobile Gas Station. Photographer Davidian also responded to USCMC to photograph Mullen and his injuries. The photographs were stored at TID Photographic Unit under Control No. D0770076.

Copies of all photographs are also stored in the FID casebook.

**Digital In-Car Video System (DICVS):** The police vehicle operated by Officers Cunningham and Garcia was equipped with DICVS and was activated upon their Code Three response. It did not capture video of the use of force; however, it did capture audio. The vehicle's rear camera was activated after Mullen was already placed in the

backseat of the vehicle. The rear facing camera did not capture anything pertinent to the use of force.

The police vehicle operated by Officers Tuason and Grant was equipped with DICVS and was activated upon their Code Three response. The vehicle was parked behind Officers Garcia and Cunningham's vehicle and captured the officers carrying Mullen to the police vehicle and Mullen being placed inside the left rear seat of Officer Garcia's vehicle.

**Body-Worn Video:** Force Investigation Division detectives reviewed all relevant BWV of the incident. The following is a brief synopsis of the relevant BWVs:

- Officers Garcia and Cunningham's BWVs captured the use of force with Mullen.
- Officers Liem and Lassak's BWVs captured Officer Lassak assisting in carrying Mullen to the police vehicle, as well as their interview of Angela M.
- Officer Grant's BWV captured her requesting a RA for Mullen.
- Sergeant Tuiali'i's BWV captured his Command and Control at scene, as well as his interviews with Witnesses Angela M. and Molina.
- Sergeant Johnson's BWV captured his interview with Witnesses Bernal and Borgen.
- Officers Ornelas and Vogel's BWS captured interviews with witnesses Ahn, Ellett, and Flemming (Investigators' Note No. 8).

**Outside Video:** On August 1, 2019, FID investigators responded to the Mobile Gas Station with TID Electronics Police Surveillance Specialist I Jesus Bravo, Serial N5339 to recover the surveillance video. The video surveillance captured the assault of Angela M. by Mullen and Mullen fleeing the location. Bravo downloaded the video of the interior of the convenience store and the video was booked at TID Electronics under Control No. A741539.

**Note:** According to Officer Vogel, at the time of the incident, Ahn was unable to download the footage of the altercation between Angela M. and Mullen. Officer Vogel's BWV captured him recording a portion of the footage from the store monitor on his city cellphone. He later gave the footage to Officer Cunningham for his arrest report. Investigators did not obtain the footage recorded on Officer Vogel's cellphone because investigators obtained the entire footage, which was booked.

FID investigators located a surveillance camera on the east wall of the property of So-Cal Tires & Wheels. The video footage captured a portion of the Tire Shop's east parking lot where the use of force occurred. The footage captured Mullen fleeing Angela M at the time of the arrival of the officers. The footage also captured officer's contact with Mullen and the use of force. Bravo downloaded the video and booked it at TID Electronics Unit under Control No. A747507.

Copies of these videos were also retained in the FID case file and are available for review.

**Social Media:** Social media outlets were monitored by FID personnel after the LERI and no activity was noted.

## **Notifications**

On August 1, 2019, at approximately 1750 hours, Department Operations Center (DOC) Division was notified of the Categorical Use of Force and the details of the subsequent notifications are attached (Addendum No. 5 and Investigators' Note No. 9).

## **Personnel at Scene**

This incident was originally investigated by Newton Area as a Non-Categorical Use of Force, and the scene was cleared once Sergeant Tuialii's investigation was completed.

Force Investigation Division Detective III Jim Goossen, Serial No. 26464, arrived at USCMC at approximately 1500 hours, and initiated the assessment leading up to the CUOF investigation.

## **Communications**

The computer-generated incident history printout and digital recordings associated with this incident on Newton Area Base Frequency are on file at FID (Incident No. 190731001744).

Copies of the CD Master Tapes for Newton Area and related emergency telephone calls (911) are on file at FID.

The digitally recorded interviews of the involved and percipient officers and civilian witnesses are stored in the Training Evaluation and Management System (TEAMS II) database (Addendum No. 6).

## **Justice System Integrity Division**

This case did not meet the criteria for presentation to the Los Angeles County District Attorney's Justice System Integrity Division (JSID).

## **Investigators' Notes**

1. Angela M. did not respond to several requests by Force Investigation Division (FID) investigators to interview her. Investigators scheduled an interview with her for August 28, 2019; however, she failed to show up to the meeting. Investigators left several additional voicemails on her cell phone, in an attempt to re-schedule the interview; however, Angela M. has not returned any of the calls. Therefore, Angela M.'s statements in this report were gleaned from her initial interview by Newton Police Officer I Matthew Lassak, Serial No. 43859, which was recorded on his BWV,

along with her interview by Newton Area Major Assault Crimes (MAC) Detective I Crystal Davis, Serial No. 37624, which was documented on a Los Angeles Police Department Follow-Up Investigation Form 3.14.

2. The investigation revealed that Officer Garcia was not equipped with a baton or HRD on his person.
3. According to Officer Lassak, his BWV camera dislodged from its holder on two separate occasions. The first time was when he attempted to place Mullen to a standing position and Mullen's right elbow struck the camera. The second time occurred while Officer Lassak attempted to handcuff Mullen's left wrist to the gurney. His camera struck the side of the gurney and dislodged.
4. During a review of Officer Cunningham's and Garcia's BWV video by FID detectives, Officer Garcia can be heard using profanity on three separate occasions while attempting to take Mullen into custody:
  - At approximately 09:08:07 hours, Officer Garcia stated, *"Aaaah...Fuck...aah...stop moving!"*
  - At approximately 09:08:51 hours, he stated to Officer Cunningham, *"Get this fucking guy up, make sure nothing is in his waistband, alright?"*
  - At approximately 09:09:43: hours, he stated, *"Let's drag his ass."* According to Officer Garcia the reason he made this statement was because, *"He's still not going to assist us and walk on his own to the car, so at that point, I wanted to get him off the ground and let's get him to our black-and-white and let's get him inside. So if he's not going to do it, obviously, we're going to have to take him there, so let's get him to the car. That's my - - my intention."*<sup>26</sup>
5. According to Sergeant Tuialii, it was relayed to him by an unknown officer that Paramedic/Firefighters Cuervo and Nakamura were transporting Mullen to a hospital because Mullen had stated he was suicidal. Additionally, Lieutenant Sun's Watch Commander's log indicated that the transport was due to Mullen's statement regarding suicide. However, Mullen's absentee booking questionnaire did not reflect any suicidal ideation or statements by Mullen. Similarly, no statement by Mullen was captured on any known BWV. Paramedic/Firefighters Nakamura and Cuervo were interviewed and did not recall any suicidal statements made by Mullen. They cited LAFD policy requiring mandatory transportation of injured suspects in police custody as the sole reason Mullen was transported to USCMC. Therefore, MEU was not notified of this incident, until contacted by FID to inquire about Mullen's history of MEU contacts.
6. This incident was initially handled by Sergeant Tuialii as a Non-Categorical Use of Force (NCUOF). Once it was determined that Mullen would be admitted, the investigation was re-classified as a Categorical Use of Force (CUOF). Officers Garcia and Cunningham were off-duty when the incident was re-classified.

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<sup>26</sup> Officer Garcia's statement, Page 44, Lines 5-11.

Lieutenant Sun telephoned them and they were ordered not to discuss this incident until interviewed by FID personnel.

7. Officer Garcia's BWV captured an officer informing him that he had blood on his face. Officer Garcia was then handed a Hexistat cloth and cleaned his face. Witness Borgen also recalled seeing a scratch on Officer Garcia's face. However, according to both officers, they were not injured from the incident and the positioning of Officer Garcia's face was near Mullen's left shoulder.
8. The investigation determined the following issues regarding BWV activations:
  - Officer Garcia's BWV did not capture two full minutes of buffering prior to activation.
  - Officer Tuason had three BWVs related to the incident. His second and third BWVs did not capture two full minutes of buffering prior to activation.
  - Officer Grant's BWV begins on an unrelated traffic stop and did not capture two full minutes of buffering prior to activation. Additionally, she did not have her BWV activated in the RA during the transport of Mullen.
  - Sergeant Tuialii had three BWV related to this incident. His first BWV was not activated during his Code Three response. His second and third BWVs did not capture two full minutes of buffering prior to activation.
  - Officer Ornelas' BWV did not capture two full minutes of buffering prior to activation.
  - Sergeant Johnson had two BWVs related to the incident. Neither BWV captured two full minutes of buffering prior to activation.
  - Officer Cunningham recorded two BWVs. Neither BWV captured two full minutes of buffering prior to activation. However, Officer Cunningham was within the BWV 90-day transition period at the time of this incident.
  - Officer Lassak's BWV was activated upon arrival at scene and did not capture the audio of his initial contact with Mullen. However, Officer Lassak was within the BWV 90-day transition period at the time of this incident.
9. The incident was determined to be a CUOF on August 1, 2019 at approximately 1730 hours. After the determination, Lieutenant Reynolds notified Lieutenant Sun, and requested he make the notification to the DOC. Lieutenant Sun's Watch Commander log indicated that he called the DOC and notified them at approximately 1748 hours. Lieutenant Reynolds then called the DOC at approximately 1750 hours to ensure the DOC had started their notification process. The DOC's notification log reflects the second call from Lieutenant Reynolds as the official notification at 1750 hours.
10. On March 17, 2020, Force Investigation Division, Commanding Officer, Captain Al Pasos, Serial No. 25501, informed the Director, Office of Operations, Assistant Chief Robert N. Arcos, of the above issues.

## **CHIEF OF POLICE REPORT<sup>27</sup>**

### **Chief of Police Findings**

**Tactics** – Administrative Disapproval Garcia. Tactical Debrief, Sergeant Tuialii, along with Officers, Cunningham, Lassak, and Vogel.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers Garcia and Cunningham.

**Non-Lethal Use of Force** – In Policy, No Further Action, Officers Garcia, Cunningham, and Lassak.

### **Chief of Police Analysis**

#### **Detention**

- Officers Garcia and Cunningham responded to a radio call of a “415 man assaulting a woman.” The suspect was described as a male, Black, wearing blue jeans and no shirt. As the officers neared the location of the radio call, Angela M. yelled and drew their attention, wherein she advised them that Mullen had fled to a nearby business. Angela M. pointed in the direction of the So-Cal Tires & Wheels business. Officers entered the property and were further directed by witness Molina who pointed toward the east side of the location. As officers searched for Mullen, officers opened a storage room door, which revealed Mullen inside, who matched the description of the suspect in the radio call. Officers gave Mullen verbal commands. Officers attempted to handcuff Mullen and detain him, at which time Mullen tensed his body and resisted officers which led to officers becoming involved in a Non-Lethal Use of Force. The officers’ actions were within Department policies and procedures.

#### **Tactics**

- Department policy relative to a Tactical Debrief is: *“The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance.”*

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

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<sup>27</sup> The information provided in this section summarizes the analysis and findings set forth in the Chief of Police’s report for this case.

## Tactical De-Escalation

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

### *Tactical De-Escalation Techniques*

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- **Lines of Communication** (*LAPD Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques*)

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

**Planning** – Officers Garcia and Cunningham were regular partners for approximately four weeks. During the time they worked together they frequently discussed tactics which included contact and cover roles as well as lethal and less-lethal force options. While en route to the radio call, Officer Garcia advised Officer Cunningham that if they located Mullen, they would immediately detain him pending an investigation.

The officers planned for their initial response, specifically if they located Mullen. However, no additional planning was discussed while en route and there was no planning for other possibilities such as designating a less-lethal cover officer in the event Mullen was uncooperative.

**Assessment** – While en route to the location of the original radio call, Officers Garcia and Cunningham were provided with updated information which indicated Mullen and Angela M. had left the convenience store where the radio call was generated. Officers evaluated the new information and relied upon their observational skills to identify Angela M. and the location she directed them to. After contacting witness Molina, Officers Garcia and Cunningham assessed the information provided, and searched the last known area Mullen was observed. Officers located Mullen and assessed that he did not appear to be armed and was initially compliant with their commands. Officers made the determination to initiate physical contact and handcuff Mullen at which time he became aggressive and physically resisted the officers. Officers utilized non-lethal force to overcome Mullen's resistance and requested additional resources to assist due to Mullen's continued aggression.



Officers assessed the information that was provided to them through CD, the individuals at scene, and Mullen's initial compliance with their direction. This incident was not a rapidly unfolding event and officers had time to obtain additional information from Angela M. and Molina to further assess and gather additional personnel to create a more detailed tactical plan. The officers would have benefitted from additional assessment of the incident by a more comprehensive interaction with Angela M. and Molina.

**Time** – As Officers Cunningham and Garcia approached the vicinity of their radio call location, Officer Garcia directed Officer Cunningham to place them Code-Six, which allowed officers the additional time to react to any potential threats they may encounter. When officers located Mullen in the small confined storage room, Officer Garcia immediately proceeded to execute the plan he had discussed with Officer Cunningham, which was to immediately take Mullen into custody, considering Mullen was initially cooperative. By doing so, Officer Garcia intended to reduce the time Mullen had to decide to flee or arm himself which could have presented a safety concern for the officers and community members.

Officers did not fully utilize the time while en route to the radio call to develop and communicate a detailed plan or designate role assignments. However, Officers Garcia and Cunningham acted expeditiously in accordance with their prior communicated plan to detain Mullen as soon as practicable. The officers were afforded time to update their Code-Six location, garner additional information about Mullen from Angela M. and Molina, as well as request additional resources prior to the initiation of a search. However, they did not fully use that time which was available to them.

**Redeployment and/or Containment** – Officers Garcia and Cunningham located Mullen lying on the ground in a small confined storage room. Officers initially maintained their cover and line of sight of Mullen as he may have had the ability to arm himself with a weapon from the storage room and gain a tactical advantage, even though officers observed that Mullen did not have a weapon in his hands. Officers decided to initiate physical contact with Mullen, who was complying with their directions, and remove him from the storage room which they had not cleared. Officers did not fully utilize the cover at their disposal, nor have additional resources at scene to ensure containment was in place prior to engaging Mullen, as Mullen was already contained in his position which would have allowed the response of additional units to provide assistance to Officers Garcia and Cunningham.

**Other Resources** – Officers Garcia and Cunningham made the decision to initiate physical contact with Mullen, who was initially compliant, which resulted in a Non-Lethal Use of Force. Officers Garcia and Cunningham were not able to quickly overcome Mullen's physical resistance, resulting in Officer Garcia requesting additional resources to their location to assist with controlling Mullen. Even though Mullen did not initially demonstrate any physical resistance, the officers lack of

request for additional resources prior to their search resulted in no additional resources on scene and available to assist when needed.

**Lines of Communication** – While en route to the scene of the radio call, Officer Garcia established a basic plan with Officer Cunningham which was to detain Mullen for an investigation as soon as they located him. Upon direction from Officer Garcia, Officer Cunningham placed themselves Code-Six, in order to communicate their location to both CD and additional resources. Officer Garcia maintained communication with Officer Cunningham when he informed Officer Cunningham his observation of Angela M. attempting to gain their attention and directed them to the area Mullen had fled. Officer Garcia continued to communicate with Officer Cunningham when he directed Officer Cunningham to holster his service pistol after observing Mullen's hands to be free of weapons, and prior to initiating physical contact with Mullen. Officer Garcia established communication with Mullen by providing him commands to get on the ground. Officer Garcia established communication with Officer Cunningham advising him to be mindful of Mullen's attempt to conceal his hands in the area of his waistband. Additionally, Officer Garcia maintained communication with CD and requested additional resources to assist with Mullen, who was physically resisting them.

## **Debriefing Points**

- During the review of the incident, the following Debriefing Topics were noted:
- **Contact and Cover Roles**

*The cover officer's primary role is to protect the contact officer. This officer provides protection from a position of surveillance and control. This officer must continue to monitor the suspect's actions as well as any potential threats in the area (Los Angeles Police Department, Standardized Roll Call Training, Deployment Period 3/2005).*

*Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).*

Prior to this incident, Officers Garcia and Cunningham had worked together for approximately four weeks. The officers routinely discussed tactical situations which included their designated roles and assignments. During this incident officers switched between the roles of contact and cover. The FID investigation revealed both officers believed they were the designated lethal officer during the incident.

Operational success is based on the ability of officers to effectively establish designated roles and communicate during critical incidents. Officers improve overall

safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

In this case, Officers Garcia and Cunningham conducted an open-air search, wherein Officers identified a closed door that needed to be cleared. Officer Garcia was initially the contact officer and Officer Cunningham was the cover officer based on their previous discussions. During the open-air search, officers switched contact and cover roles placing Officer Cunningham in the front contact position during their search. As officers approached a closed storage room door in the area where Mullen was possibly hiding, Officer Garcia directed Officer Cunningham to check behind the door. Officer Cunningham opened the door to discover Mullen. As Officers were giving commands, Officer Garcia holstered his service pistol and stepped from behind Officer Cunningham, who was providing cover, thereby exposing himself to unknown threats by placing himself in front of a doorway leading to an un-cleared room with a suspect in the threshold. According to Officer Garcia he wanted to take Mullen into custody quickly and did not want Mullen having access to any possible weapons in the storage room.

The UOFRB noted that officers acted quickly upon contact with Mullen and would have preferred for officers to have taken more time to direct Mullen out and away from the doorway to a safer area before leaving cover to detain him. Even though the comments of the radio call indicated that there was only one suspect, and Mullen matched the description of the single suspect, the Chief would have also preferred that Officers Garcia and Cunningham took more time to direct Mullen into a safer location giving Officers Garcia and Cunningham a much-needed tactical advantage, due to Officer Cunningham's limited tenure as a police officer. Additionally, the Chief would have preferred that Officers Garcia and Cunningham maintained their pre-designated roles due to the limited experience of Officer Cunningham.

Based on the totality of the circumstances, the UOFRB majority determined, and the Chief concurred, that in this circumstance, the officers' actions were not a deviation from approved Department tactical training. However, in an effort to enhance future tactical performance, the Chief directed this to be a topic of discussion during the Tactical debrief.

- **Tactical Communication / Tactical Planning** (Substantial Deviation without Justification - Officer Garcia)

*Officers are trained to work together and function as a team. In order to ensure officer safety and help ensure an appropriate outcome, the primary officers and cover officers must effectively communicate with one another. Appropriate communication involves advising the primary officer of any critical occurrences or safety issues (California Commission on Peace Officers Standards and Training, Learning Domain 22).*

*Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).*

Prior to this incident, Officers Garcia and Cunningham had worked together for approximately four weeks. Officers discussed tactical situations which included contact and cover roles as well as less-lethal force options in response to radio calls. While en route to the radio call, Officers Garcia and Cunningham did not discuss a tactical plan with regards to the battery suspect. Additionally, throughout the course of the radio call, officers exercised minimal aspects of "PATROL."

Operational success is based on the ability of the officers to effectively communicate during critical incidents. The officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution. A sound tactical plan should be implemented to ensure minimal exposure to the officers, while keeping in mind officer safety concerns.

In this case, Officers Garcia and Cunningham minimally developed and communicated a clear tactical plan for the radio call they were responding to. Officers Garcia and Cunningham relied upon their prior shifts worked together and their prior discussions regarding contact and cover roles as a foundation for this radio call.

The UOFRB majority noted the officers minimally developed a tactical plan while en route to the radio call and throughout the incident. The UOFRB majority would have preferred that officers took additional time to enact a more robust plan prior to their arrival at scene which clearly identified pre-designated roles of contact and cover, as well as, lethal and less-lethal designations. According to Officer Garcia, during his previous discussions regarding tactics with Officer Cunningham, Officer Garcia would maintain the role of the contact officer unless "something dictates otherwise," and Officer Cunningham would be responsible for the deployment of less-lethal force options. According to Officer Cunningham, he was going to be the Designated Cover Officer (DCO) and Officer Garcia would be "less lethal" because that was what the officers had always talked about in the past. As Officers Garcia and Cunningham arrived on scene, Officer Garcia took on the role of contact officer and led Officer Cunningham as they searched for Mullen. During the search, officers switched roles and Officer Cunningham took over the search as contact officer.

In this incident, when Officers Garcia and Cunningham arrived at the intersection of the radio call, they observed the Angela M. who was flagging them down. The officers drove up to Angela M. who pointed in the direction of the So-Cal Tires & Wheel business where Mullen was possibly hiding, which was a different location from the original call location. Officers did not obtain additional information and did not advise CD of their updated location as each officer believed that the other had

updated their location with CD. Officers Garcia and Cunningham proceeded to the area which Angela M. pointed towards. As the officers exited their police vehicle in the parking lot of the So-Cal Tires & Wheel business, witness, E. Molina pointed in the same direction and area as Angela M. had done previously, wherein, the officers began an open-air search of the area.

The UOFRB majority noted that even though the officers obtained no additional information from the victim, their actions were supported by an additional witness pointing to the same area where Mullen was possibly hiding. Additionally, Officers Garcia and Cunningham were unsure of the circumstances of the radio call and wanted to immediately detain the suspect to prevent any further violence.

In this incident, upon Officers Garcia and Cunningham's continued search for Mullen, Officer Cunningham opened a closed storage room door and upon doing so discovered Mullen. Officers initially gave Mullen conflicting simultaneous commands as Officer Garcia directed Mullen, "Get out here, come here, stay down" and Officer Cunningham directed Mullen to, "Come out here, stand up, stand up, face away from me, show me your hands!" The UOFRB majority would have preferred Officer Garcia maintain control of the scene as contact officer and had been solely in charge of communicating with Mullen which would have eliminated the conflicting commands and eliminated possible confusion to Mullen; however, as the officers conducted their open-air search, prior to contacting Mullen, Officer Cunningham assumed the contact position and did as any other officer would have done when faced with a suspect directly in front of him by giving commands. Officer Garcia also moved away from the cover provided to him by Officer Cunningham and the wall by which they were standing wherein he obtained a better view of Mullen; upon doing so, Officer Garcia advised Officer Cunningham to holster his service pistol and Officers Garcia and Cunningham initiated physical contact with Mullen. According to Officers Garcia and Cunningham they acted upon their pre-identified plan. Officer Cunningham further elaborated; he initiated physical contact because he stated that it was "natural" for him to apply physical contact to detain Mullen due to how he and Officer Garcia had operated "many times" in previous incidents.

When officers initiated physical contact and attempted to apply handcuffs to Mullen, Mullen resisted, resulting in the Non-Lethal Use of Force. While engaged in the Non-Lethal Use of Force, communication between officers was minimal; however, Officer Garcia did communicate officer safety concerns to Officer Cunningham.

The UOFRB majority expected more planning and control of the situation from Officer Garcia, due to Officer Garcia being an FTO and Officer Cunningham having limited experience as an officer in the field. The UOFRB majority also would have preferred Officer Garcia take a more active leadership role by creating a detailed plan on how to handle the radio call which included contact and cover roles, lethal and less-lethal designations along with better communication between himself and Officer Cunningham. While it could have been better, the UOFRB majority opined that Officers Garcia and Cunningham's preplanning and communication was

sufficient and noted that each officer had pre-identified roles. While Officers Garcia and Cunningham's communication efforts and tactical planning were minimal, they did communicate and plan for officer safety concerns which met the standard and did not substantially deviate from established Department procedure and training.

The UOFRB minority reviewed the same set of facts and circumstances and noted that Officer Garcia was remiss in his responsibility as an FTO due to having a unique responsibility to influence Officer Cunningham and was responsible for providing good basic training, as well as, leading by example. Officer Garcia was also partnered with an officer, who was still reliant on his guidance, due to having only approximately four weeks of field experience. While en route to the radio call, Officer Garcia did not discuss the comments of the call, nor did they discuss potential tactical scenarios associated with such call, leaving Officer Cunningham with minimal direction on how to handle this radio call properly and safely. The only direction provided to Officer Cunningham was to detain Mullen if they saw him. The UOFRB minority opined that Officer Garcia's actions lacked leadership, direction, and detail which subsequently left Officer Cunningham who is reliant upon Officer Garcia as his FTO without direction or clarity.

The UOFRB minority noted that both officers proceeded without any specificity or further information from Angela M. and responded to the information offered by Angela M. without soliciting any further details. The UOFRB minority opined, that if acquired, the additional information would have benefitted the tactical planning and tactical communication between the officers and not placed the officers at a tactical disadvantage. Additional information obtained from Angela M., would have allowed officers to establish the spousal relationship between Angela M. and Mullen, as well as, identify the mental health concerns of Mullen along with his aggressive behavior, which would have better prepared the officers to engage Mullen and/or request additional resources.

The UOFRB minority opined that acquiring additional information was pivotal to this incident due to the suspect being extremely aggressive and not having taken his mental illness medications. This information would have better prepared the officers to engage the suspect and/or request additional resources. Furthermore, by gathering basic information, the officers could have established who the victim was and learned that she was safe. This would have given the officers time to get resources and conduct the search with additional units. In this case, Officers Garcia and Cunningham had time to slow the incident down and gather additional information regarding Mullen from Angela M. and a description of the area where Mullen had fled. There was no exigency at the time of occurrence. Due to the overall lack of de-escalation techniques by Officers Garcia and Cunningham, which include tactical planning and tactical communication, the UOFRB minority opined that the officers substantially deviated without justification from established Department procedures and training.

The Chief would have preferred that Officers Garcia and Cunningham developed and communicated a more detailed plan, which established roles and assignments including contact and cover as well as lethal and less-lethal designations, as they were en route to the radio call in order to maintain a tactical advantage and ensure they properly functioned as a team. The Chief additionally would have preferred officers to have communicated more with each other throughout the entirety of the incident to ensure a successful resolution.

Based on the totality of the circumstances, the UOFRB majority determined, and the Chief concurred, that Officer Cunningham's tactical communication and tactical planning lacked detail and clarity, however, Officer Cunningham had limited experience and was being guided by Officer Garcia during the incident. Officer Cunningham's actions were a not a deviation from approved Department tactical training

Based on the totality of the circumstances, the UOFRB minority determined, and the Chief concurred, that Officer Garcia's tactical communication and tactical planning lacked detail and clarity. Officer Garcia's actions were a substantial deviation, without justification, from approved Department tactical training. In an effort to enhance future tactical performance, the Chief directed this to be a topic of discussion during the Tactical debrief.

- **Additional Unit Request**

*An "Additional Unit" broadcast is when an officer requires an additional unit for a non-emergency situation. The officer requesting shall include the location, followed by the unit identification and all other pertinent information. An "additional unit" request is not an emergency call and responding officers shall obey all traffic laws when responding (Los Angeles Police Department Manual, Volume 4, Section 120.40).*

Officers Garcia and Cunningham did not request an additional unit or supervisor while they actively searched for Mullen whom they believed could be armed, and who was ultimately located behind a closed storage room door. Officers bypassed Angela M. and witness Molina who could have provided information regarding Mullen's level of intoxication, possession of weapons, and possible mental illness status. Officers initiated physical contact with Mullen prior to requesting additional resources, having knowledge that Mullen was the suspect in an assault investigation.

Although officers are given discretion regarding the appropriate time to broadcast a request for an additional unit, it would have been tactically advantageous to do so based on the officers limited knowledge of Mullen and the crime he committed. Additional personnel would have been advantageous in clearing the location, opening the door and clearing the storage room in which Mullen was discovered, as well as maintaining cover on the unsearched storage room and remainder of the

location as Officers Garcia and Cunningham were engaged in the use of force. Additional personnel would also have provided assistance in combating Mullen's resistance and effecting the eventual detention of Mullen.

In this case, the UOFRB noted the officers had the time and opportunity to wait for an additional unit to respond and assist them with gathering information at scene, assist in the search, and open the door to the storage room.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that while identified as an area for needed improvement, the officers' actions were not a deviation from approved Department tactical training. However, in an effort to enhance future performance, the Chief directed that this to be a topic of discussion during the Tactical Debrief.

- **Updating Status**

*When a unit is conducting a field investigation and no assistance is anticipated, a "Code Six," followed by the location, shall be broadcast. A unit shall not go "Code Six" until it arrives at the scene of a call.*

*Units on "Code Six" status shall remain available for reassignment to priority calls by monitoring their radio frequencies. A unit on "Code Six" status may indicate to the dispatcher additional circumstances, which will make the unit unavailable for assignment to a priority call.*

*These circumstances may include.*

- *Suspect in custody;*
- *Primary unit at a crime scene; and/or,*
- *Required at a back-up, assistance, or help location.*

**Note:** *The unit shall notify the dispatcher as soon as it is again available for radio calls (Los Angeles Police Department Manual, Volume 4, Section 120.40).*

Officers Garcia and Cunningham did not update their status or generate a new Code-Six location after being directed by Angela M. to the area where Mullen had fled, which was located approximately 400 feet from their initial Code-Six location.

The purpose of going Code-Six and updating the unit's location is to advise CD and officers in the area of the unit's location and the nature of the field investigation, should the incident escalate and necessitate the response of additional personnel. Officer safety is of paramount concern and officers should always strive to maintain the tactical advantage during field duties.

In this case, as officers neared the location of the radio call, Officer Cunningham advised CD that they were Code-Six at the location of radio call. Following Officer



Cunningham's Code-Six broadcast, Officers Garcia and Cunningham observed Angela M. directing them towards 5826 South Olive Street. Officers proceeded to the new location in order to locate Mullen; however, they did not notify CD of their updated location. The UOFRB noted that though they would have preferred the officers update their location in order to keep additional resources apprised of their current location, the officers parked their vehicle approximately 400 feet from their Code-Six location and it was clearly visible. The UOFRB opined that based on their vehicle being within the general area of their broadcasted Code-Six location and in line of sight, the officers satisfied the requirements of updating their status.

The Chief would have preferred for Officers Garcia and Cunningham notify CD of their new updated location in order to maintain a tactical advantage and keep additional resources aware of their most current location should additional resources be required.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that in this circumstance, the officers' actions were not a deviation from approved Department tactical training. However, in an effort to enhance future tactical performance, the Chief directed this to be a topic of discussion during the Tactical debrief.

- **Hobble Restraint Device**

*All In addition to the basic uniform (Department Manual Section 3/614), officers assigned to uniformed field, a geographic Area front desk, or traffic division front desk-related duties, shall carry the following equipment:*

**Baton:** *Officers using motorized equipment while on-duty shall carry their batons in a manner authorized by their commanding officer. The carrying of the baton by officers assigned to intersection traffic control shall be at the option of their commanding officer;*

**Hobble Restraint Device:** *Except for motorcycle officers, the hobble restraint device shall be carried on the key ring holder of the officer's equipment belt, in either sap pocket of the uniform trouser or in a Department approved carrying case. Motorcycle officers shall carry the hobble restraint device in a uniform pants pocket, or in a Department approved carrying case*

In this case Officer Garcia responded to the radio call of an in-progress battery, upon arrival the battery had ceased, and the suspect had fled into hiding, wherein time was afforded to Officer Garcia to ensure he was properly equipped. Officer Garcia did not take advantage of the time afforded to him and initiated a search without his side-handle baton and his Hobble Restraint Device (HRD).

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that in this circumstance the Chief would have preferred that Officer

Garcia taken the time to properly equip himself with all his required equipment before commencing with the search due to the lack of exigent circumstances. Additionally, Officer Garcia as a Training Officer has the responsibility to teach when and how to properly utilize equipment. The use of the HRD in this application would have provided additional assistance to the officers and aided the overall control of the suspect. In an effort to enhance future tactical performance, the Chief directed this to be a topic of discussion during the Tactical Debrief.

### **Additional Tactical Debrief Topics**

- **Required Equipment** – The investigation revealed that Officer Garcia was not equipped with his side-handle baton or his Hobble Restraint Device (HRD) at the time of the incident. Officer Garcia is reminded of the importance of having his required field equipment on his person to allow for additional use of force options and to de-escalate an incident. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Basic Firearm Safety Rules** – Body Worn Video revealed that Officer Cunningham drew his service pistol while in the parking lot, as he searched for Mullen. While holding his service pistol in his right hand, Officer Cunningham used his left hand to push open the storage room door. In the process of this motion, Officer Cunningham momentarily covered his left hand with the muzzle of his service pistol. Officer Cunningham is reminded to adhere to the Department's four basic firearm safety rules at all times. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Simultaneous Commands (Conflicting)** – Officer Garcia and Cunningham issued simultaneous conflicting commands when they first discovered Mullen and attempted to get him to voluntarily comply with their orders. Officer Cunningham ordered Mullen to stand up and face away from him, while Officer Garcia directed Mullen to come out of the storage room and stay down. Officer Garcia and Cunningham are reminded to adhere to their pre-designated roles of contact and cover and to provide consistent commands so as not to introduce confusion to a suspect which could escalate a situation. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Cover and Concealment** – After opening the door to the storage room, Officer Garcia placed himself in front of the open entryway. Officer Garcia left the cover that was provided by his partner and the wall and moved into the open space wherein he subsequently became involved in a use of force in front of an unsearched room. Officer Garcia is reminded that distance and cover allow the officer time to better manage a situation. The Chief directed this to be a topic of discussion during the Tactical Debrief.
- **Use of Profanity** – The investigation revealed that Officer Garcia utilized profanity on three separate occasions during the use of force. The use of profanity can

demonstrate a lack of professionalism of Department personnel. The Chief directed this to be a topic of discussion during the Tactical Debrief.

**Note:** Newton Area determined that Officer Garcia had a previous discourtesy complaint for an incident that occurred on July 31, 2014. The previous complaint was adjudicated as Non-Disciplinary/Actions Could Have Been Different. Due to Officer Garcia's previous discourtesy complaint, Captain H. Mohammadi, Serial No. 36506, Commanding Officer, Newton Patrol Division recommended that this issue was best addressed through the generation of a personnel complaint.

- **Non-Categorical Use of Force Investigation Protocols** – The investigation revealed the use of non-lethal force continued as Sergeant Tuialii was on scene. Sergeant Tuialii did not realize his direction and oversight to officers with regard to carrying Mullen to the police vehicle would deem him involved in the non-lethal use of force. Sergeant Tuialii believed the use of force had ended prior to his arrival at scene. Sergeant Tuialii is reminded that when providing guidance and direction in relation to a use of force he shall follow Non-Categorical Use of Force protocols for future investigations. The Chief directed this to be a topic of discussion during the Tactical Debrief.

## **Command and Control**

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

*Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving*

*conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).*

*Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Los Angeles Police Department, Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide).*

The investigation revealed Sergeant Tuialii was the first supervisor to arrive at the location. Sergeant Tuialii assumed the role of Incident Commander; however the incident was believed to be a Non-Categorical Use of Force at the time. Sergeant Tuialii *directed officers to pick up* Mullen and place him into a police vehicle and request an RA. The investigation revealed, Sergeant Tuialii initially believed he was a witnessing supervisor to the Non-Lethal Use of Force, and requested an additional supervisor to the location to conduct the Non-Categorical Use of Force investigation. Sergeant Johnson responded and took over investigative responsibility for the Non-Lethal Use of Force investigation. After further investigation by Sergeant Tuialii, he determined he had arrived after the Non-Lethal Use of Force concluded and overtook investigative responsibility once again for the Non-Categorical Use of Force investigation. The following afternoon, based on Mullen's medical status, the incident was re-classified as a Categorical Use of Force and FID assumed investigative responsibility. The UOFRB noted that in the future should Sergeant Tuialii happen across a similar circumstance, he should contact either the Watch Commander or another, more experienced supervisor to obtain advice on determining the circumstances of a use of force incident.

The UOFRB noted that at the time the supervisors arrived, as well as, throughout their investigation at scene, the incident was considered a Non-Categorical Use of Force. The UOFRB noted that the Non-Lethal Use of Force occurred at approximately 0907 hours, however, the incident was not re-classified as a Categorical Use of Force until the following day at approximately 1730 hours.

The actions of Sergeants Tuialii and Johnson were consistent with Department supervisory training and the Chief's expectations of a field supervisor during a critical incident.

## **Tactical Debrief**

In conducting an objective assessment of this case, the UOFRB minority determined, and the Chief concurred, that the tactical communications utilized by Officer Garcia substantially, and without justification, deviated from approved Department tactical training, thus requiring a finding of Administrative Disapproval.

In conducting an objective assessment of this case, the UOFRB majority determined, and the Chief concurred, that Sergeant Tuialii, and Officers Cunningham, Lassak, and Vogel's tactics did not represent a deviation from approved Department tactical training.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, the Chief directed that Sergeant Tuialii and Officers Garcia, Cunningham, Lassak, and Vogel attend a Tactical Debrief and that the specific identified topics are discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

### **General Training Update (GTU)**

- On August 8, 2019, Officers Garcia and Cunningham attended a GTU. All mandatory topics were covered.

### **Drawing/Exhibiting**

- Department policy relative to drawing and exhibiting a firearm is: *"An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified"* (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).
- **Officer Garcia**

According to Officer Garcia, Mullen had already assaulted Angela M. and he believed Mullen was possibly armed and posed the threat of danger. As Officer Garcia exited his police vehicle he drew his service pistol as he searched for Mullen.

Officer Garcia recalled, *"When we began to clear the corner when we initially first made our approach to - - to the direction where they employee flag or directed us."*<sup>28</sup>

*Like I said, this was the man that was assaulting the woman. I didn't know if he was armed with anything.*<sup>29</sup>

*Didn't know what type of individual we were dealing with. And when we - - when we clear a corner or any type of residence or location, we always want to unholster just in case there's any type of any threat of danger."*<sup>30</sup>

According to Officer Garcia, he and Officer Cunningham located Mullen in a contained storage room. Officers gave Mullen commands, and as Mullen, who appeared unarmed, began to exit the room, Garcia holstered his service pistol prior to initiating physical contact. He communicated with his partner, Officer Cunningham, to holster his service pistol as well in anticipation of his plan to initiate physical contact with Mullen.

Officer Garcia recalled, *"Yeah. So as my partner was giving him commands, I kind of offset a little bit to the left of my partner so I could get a better visual on the suspect. And that's when I continue. I gave him commands as well, "Hey, make sure keep his hands up. And he started to come out, that's when I advised my partner, "Hey, holster up. Let's go hands on. Grab his right." That's when I was on the left side, so I said, "Let's grab him. Let's pull him out."*<sup>31</sup>

Officer Garcia was asked when he holstered his weapon, and replied, *"Before we went hands on."*<sup>32</sup>

- **Officer Cunningham** (Two occurrences)

**First Occurrence:** According to Officer Cunningham, he believed Mullen could be armed with a weapon and he had been designated as the lethal cover officer. Based on the information from the radio call, Mullen had already assaulted Angela M.

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<sup>28</sup> Officer Garcia, Page 19, Lines 5-7.

<sup>29</sup> Officer Garcia, Page 19, Lines 10-12.

<sup>30</sup> Officer Garcia, Page 19, Lines 14-18.

<sup>31</sup> Officer Garcia, Page 21, Lines 2-4, 6, and 8-13.

<sup>32</sup> Officer Garcia, Page 22, Line 10.

Officer Cunningham recalled, *"I unholstered my pistol once we began to clear that corner. I was going to be lethal; he was going to be less lethal. The, we always talked about it in the past that that would be our - - our kind of designation."*<sup>33</sup>

*I unholstered because he - - the radio - - because the comments of the radio call. He was a man who assaulted a woman, and we didn't know if that was with weapons. That wasn't really described. And then the area, we - - we didn't know if in that area there were any weapons that he was hiding."*<sup>34</sup>

While searching for Mullen, Officer Garcia asked Officer Cunningham if he could see anyone, to which Officer Cunningham shook his head no and holstered his service pistol.

**Second Occurrence:** Officer Cunningham drew his service pistol for the second-time mere seconds after holstering, as he continued to be involved in a tactical situation where he had previously drawn his service pistol due to the belief Mullen could be armed with a weapon and had already assaulted Angela M.

**Note:** A review of Officer Garcia's BWV by FID investigators captured Officer Cunningham visually searching the area in the southeast corner of the lot. Officer Garcia asked if Officer Cunningham could see anyone, and Officer Garcia shook his head no. Officer Cunningham then holstered his service pistol. Officer Garcia directed Officer Cunningham to clear the corner of the lot, and Officer Cunningham once again unholstered his service pistol.

Officer Cunningham did not provide a statement documenting the second drawing of his service pistol.

Officer Cunningham holstered his service pistol at the direction of Officer Garcia and prior to making physical contact with Mullen, because they did not observe any weapons in Mullen's hands.

Officer Cunningham recalled, *"I holstered – my partner, TO told me go ahead and holster my partner."*<sup>35</sup>

*So I saw his hands a little bit, but I think my TO had a better vantage point so he was able to tell me, you know what? I think he - - I think his hands are, you know, he doesn't have any weapons so go ahead and holster up."*<sup>36</sup>

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<sup>33</sup> Officer Cunningham, Page 5, Lines 7-8, Lines 11-12 and Lines 19-21.

<sup>34</sup> Officer Cunningham, Page 13, Lines 24-25, and page 14, Lines 1-4.

<sup>35</sup> Officer Cunningham, Page 16, Lines 22-23.

<sup>36</sup> Officer Cunningham, Page 17, Lines 5-9.

In this case, the UOFRB conducted a thorough evaluation of the reasonableness of Officers Garcia and Cunningham's Drawing/Exhibiting. The UOFRB noted that the officers responded to a radio call of an assault, where the suspect was hiding and whose whereabouts were unknown to officers who believed the suspect could be armed with a weapon.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Garcia and Cunningham, while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, the Chief found Officers Garcia and Cunningham's Drawing/Exhibiting to be In-Policy, No Further Action.

### **Use of Force – General**

- *It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*
  - *Defend themselves;*
  - *Defend others;*
  - *Effect an arrest or detention;*
  - *Prevent escape; or,*
  - *Overcome resistance*

*The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*



- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances. (Los Angeles Police Department Manual, Volume 1, Section 556.10)*

### **Non-Lethal Use of Force**<sup>37</sup>

- *It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*
  - *Defend themselves*
  - *Defend others*
  - *Effect an arrest or detention*
  - *Prevent escape; or,*
  - *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*
- **Officer Garcia** - Firm grip, Body Weight, Physical Force, Strike

According to Officer Garcia, he approached Mullen to take him into custody. As Officer Garcia attempted to place Mullen in position to be handcuffed, Mullen's body became extremely rigid and Mullen began to resist officer's actions. To combat Mullen's resistance and effect a detention, Officer Garcia utilized firm grips to maintain control of Mullen's arms, body weight to prevent Mullen from standing up and preventing escape, physical force to position Mullen at a position of disadvantage and a distraction strike to make Mullen stop his resistance and submit to officer's force applications and demands.

According to Officer Garcia, he observed Mullen seated on the ground in a storage closet attempting to hide from officers. After being given direction, Mullen laid in the threshold of the doorway on his back with his legs outstretched inside of the room while his head, torso, and arms, extended outside of the room. Officer Garcia used both of his hands to grab Mullen's left wrist. Officers then pulled Mullen until his legs were entirely out of the storage area.

Officer Garcia recalled, *"I didn't want to keep him inside in that storage facility any longer than we had to just in case he did have some type of weapon in there or he was able to resist and try to go back inside and arm himself. So I wanted to get him out of that room."*<sup>38</sup>

*I just wanted to maintain control of it. I didn't want to reach - - him reaching for anything. I wanted to assist him in getting out of that room. So I wanted to eliminate*

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<sup>37</sup> Los Angeles Police Department Manual, Volume 1, Section 556.10.

<sup>38</sup> Garcia, Page. 21, Lines 14-18.

*any type of threat that could have potentially been inside of that - - the storage room.*"<sup>39</sup>

Surveillance video depicted that once Mullen was moved from the doorway, Officer Garcia used both of his hands on Mullen's left wrist and first attempted to roll Mullen toward his left side to place Mullen on his stomach.

Officer Garcia recalled, *"We attempted to roll him over to put him in handcuffs, detain him for battery or, you know, some type of assault investigation. And as we went to go do that, the suspect immediately tensed up, and that's when he - - he began to fight with us or resist us putting him in handcuffs. We attempted multiple times to try to roll him on his back."*<sup>40</sup>

Surveillance video depicted that officers positioned Mullen facedown. As Officer Garcia gripped Mullen's right arm, near the wrist, he positioned himself on Mullen's right side as Mullen appeared to bend his arm toward his head.

Officer Garcia recalled, *"He knew we were - - I believe he knew we were trying to get him in handcuffs, and that's why he didn't want to go with the program."*<sup>41</sup>

Surveillance video depicted Officer Garcia placed his left knee on the center of Mullen's back, as he applied his body weight while attempting to hold onto Mullen's right wrist with both hands. Mullen continued to resist which resulted in Officer Garcia's losing his grip of Mullen wrist.

Officer Garcia recalled, *"To control him from trying to get back up or push back up or possibly attempt to flee away from our grip or break free of our grip."*<sup>42</sup>

*I'm keep - - at that point, to continue - - I didn't - - like I said, I didn't want him to move his right hand under his body any further than he had or towards his waistband."*<sup>43</sup>

Surveillance video depicted that during the struggle Mullen rolled over, wherein, Officer Garcia applied body weight with the left side of his upper torso and laid across Mullen's upper chest. Officer Garcia broadcast for a backup.

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<sup>39</sup> Garcia, Page. 22, Lines 18-23.

<sup>40</sup> Garcia, Page. 8, Lines 8-14.

<sup>41</sup> Garcia, Page. 28, Lines 15-17.

<sup>42</sup> Garcia, Page. 30, Lines 21-23.

<sup>43</sup> Garcia, Page. 30, Lines 5-12.

Officer Garcia recalled, *"His whole body was moving at that point from what had appeared like to me like his upper body, his arms, his head. He was constantly moving around."*<sup>44</sup>

Surveillance video depicted Officer Garcia while lying across Mullen momentarily placed his radio down onto the ground, switched his hand position to re-grip Mullen's right wrist with his left hand, pinning it in a bent position near Mullen's head.

Surveillance video depicted that Officer Garcia placed his left knee on Mullen's upper back area and applied body weight. Officer Garcia then straightened Mullen's right arm, using both his hands on Mullen's right wrist as he began to pull it toward Mullen's back.

Officer Garcia recalled, *"I'm trying to maintain control of the suspect."*<sup>45</sup>

Surveillance video depicted that Officer Garcia placed his right hand on the back of Mullen's right triceps and simultaneously placed his right knee on the back of Mullen's right shoulder, applying body weight causing Mullen to lay face down on the ground.

Officer Garcia recalled, *"I know my legs are at some point throughout the use of force, they do - - they were on the ground. At some point, I do try to use my - - my knee to - - my knee on the suspect's back to use my body weight to control him to prevent him from continue to go try to push himself up or - - or break free of our grip. I do recall using my legs or my feet on the ground, also as - - as balance points - - balance points to make sure I maintain my body weight on the suspect."*<sup>46</sup>

According to Officer Garcia, Mullen was not complying with commands and was actively resisting. Officer Garcia in an effort to gain control of Mullen's right arm and release Mullen's rigid tension used his closed right fist and struck Mullen once in his upper back.

Officer Garcia recalled, *"Like I said, he was super rigid, super tense, super tight where he was not going with our commands."*<sup>47</sup>

*I wanted to give him a distraction strike to try to get him to release the tension or not be so tight, maybe focus on that distraction strike where even if it's just for a quick second, I could maintain full control of his arm and get it behind his back."*<sup>48</sup>

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<sup>44</sup> Garcia, Page. 32, Lines 20-23.

<sup>45</sup> Garcia, Page. 34, Lines 20-21.

<sup>46</sup> Garcia, Page. 60, Lines 4-12.

<sup>47</sup> Garcia, Page. 35, Lines 11-13.

<sup>48</sup> Garcia, Page. 37-38, Lines 25 and 1-5.

*So I do remember giving him a distraction strike to the upper portion of his back, where shortly after that, I was able to main - - or get control of his arm to place it behind his back to place the second handcuff on.”<sup>49</sup>*

Surveillance video depicted Officer Garcia placed his right forearm between Mullen’s shoulder blades and neck, while using body weight to control Mullen.

Officer Garcia recalled, *“So I wanted to maintain control of the suspect, so I used my forearm to maintain my body weight on top of him to prevent him from trying to get up any further.”<sup>50</sup>*

As additional units arrived on scene, Officer Garcia released his application of body weight and momentarily walked away from Mullen. Soon after, Officer Garcia observed Officers Cunningham and Lassak lift and attempt to carry Mullen to a police vehicle. Officer Garcia assisted Officers Cunningham and Lassak and applied physical force to place Mullen into an upright position and firm grips to Mullen’s right arms to carry him to the police vehicle.

Surveillance video depicted Officer Garcia use his right hand to push Mullen’s upper chest back into an upright position and placed his left hand under Mullen’s right armpit to assist in carrying Mullen to the police vehicle.

Officer Garcia recalled, *“But I do remember carrying him, and he was still actively resisting, kind of moving around, so which would cause like my grip to slip from him or - - I didn’t want him to fall on the ground as we were carrying him.”<sup>51</sup>*

The UOFRB reviewed each application of non-lethal force by Officer Garcia in this case and determined that the force used was reasonable based on Mullen’s physical resistance. Mullen did not comply with officers’ lawful orders to submit to detention and escalated the incident further when he physically resisted officers as they attempted to effect his arrest. Throughout the incident, Office Garcia issued multiple commands to de-escalate the situation. Officer Garcia used non-lethal force to take Mullen into custody and bring the incident to a successful resolution.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Garcia, while faced with similar circumstances, would believe that the same application of non-lethal force would be reasonable to overcome Mullen’s resistance and effect his arrest.

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<sup>49</sup> Garcia, Page. 35, Lines 15-19.

<sup>50</sup> Garcia, Page. 64, Lines 12-14.

<sup>51</sup> Garcia, Page. 46, Lines 6-10.

Therefore, the Chief found Officers Garcia's Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

- **Officer Cunningham** – Firm Grip, Body Weight, Physical Force, Wrist Lock.

According to Officer Cunningham, he approached Mullen to take him into custody. As Officer Cunningham attempted to roll Mullen over to initiate handcuffing, Mullen tensed his body and physically resisted his detention. Officer Cunningham utilized firm grip to control Mullen's arms and legs, body weight as he maintained Mullen's body on the ground as Mullen attempted to stand, physical force as he pulled Mullen's arms behind his back and turned Mullen from his back to his stomach and, a wrist lock as he gained control of Mullen's hands for handcuffing.

Surveillance video depicted that Officer Cunningham moved to Mullen's right side, used his left hand to grip Mullen's right wrist and his right hand to hold onto Mullen's right elbow then pulled Mullen until his legs were entirely out of the storage area.

Officer Cunningham recalled, "I was trying to tell him to come out. First, I was trying to tell him to stand up because, you know, I didn't want him to, you know, the way he was kind of hunched over, I didn't want him going to his waist, so I was telling him to stand up so he could walk - - I can walk him out and back him out facing away from me. But he really wasn't complying with that and he was already down on the ground."<sup>52</sup>

*Yeah. He - - he was - - he was - - he was starting - - looked like he was starting to sit up, but then he stopped sitting up so we said, okay, you know what? Let's go ahead and - - and grab him and bring him out because we didn't want him reaching for his waistband. He was in that closet. The area was kind of dark. We hadn't been able to fully see inside the closet. We didn't know if he had any weapons in the area. So we wanted to, you know, get him out quickly.*<sup>53</sup>

*So we - - I went ahead and grab his right arm. And in an attempt to take him into custody, we went to roll him over on his stomach.*"<sup>54</sup>

According to Officer Cunningham, after Mullen was out of the room he wanted to take Mullen into custody. Officer Cunningham grabbed Mullen's left bicep/triceps to roll Mullen over onto his stomach and Mullen tensed up.

Officer Cunningham recalled, "*We went to roll him over on his stomach. At which point, I ended up being on the, grabbing his left arm at that point because we rolled*

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<sup>52</sup> Cunningham, Page. 17-18, Lines 22-25 and 1-5.

<sup>53</sup> Cunningham, Page. 18-19, Lines 20-25 and 1-4.

<sup>54</sup> Cunningham, Page. 7, Lines 18-21.

*him over and then he became - - at that point when we rolled him over on his stomach and I went to grab him, he became tense, rigid.*<sup>55</sup>

Surveillance video depicted the officers positioned Mullen face down. Mullen bent his left arm and placed it close into his upper body. Officer Cunningham attempted to pull Mullen's left arm out as he placed his right knee on Mullen's back and applied body weight. Additionally, Officer Cunningham placed his right hand on Mullen's left triceps and used his left hand to grab Mullen's left wrist.

Officer Cunningham recalled, *"He just, he didn't want to be placed in cuffs. So, he started - - he started to kind of combat that a little bit. And he started to kind of stand - - try to stand up."*<sup>56</sup>

*The wrist and elbow, to kind of get him in a - - in like a rear arm so I can be able to put his hands behind his back and gain compliance."*<sup>57</sup>

Surveillance video depicted that while Officer Garcia applied body weight with the left side of his upper torso laid across Mullen's upper chest and broadcast for a backup, Officer Cunningham continued to hold on to Mullen's left wrist with his left hand and was able to pin Mullen's arm down across Mullen's chest.

Officer Cunningham recalled, *"I was trying to do the same thing with the - - I believe I had his triceps with one hand and his wrist with the other."*<sup>58</sup>

Surveillance video depicted that Officer Cunningham repositioned himself to the right side of Mullen. Officer Cunningham released Mullen's wrist and used his right hand on Mullen's left elbow to begin pushing the elbow across Mullen's body, and grabbed Mullen's jeans near his left knee, to roll Mullen onto his stomach.

Officer Cunningham recalled, *"He kept trying to roll over back to his back so we couldn't get - - so we couldn't get to his hands...I don't. I just remember I ended up having to roll him - - use both hands, utilizing both hands, kind of rolled him to the left, so he must have - - I don't know - - we - - I - - I remember rolling him to the left using both hands."*<sup>59</sup>

Surveillance video depicted that Officer Cunningham then placed his right hand on the back of Mullen's left shoulder and completed rolling Mullen face down on to his stomach. Once Mullen was face down, Officer Cunningham placed his left knee on

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<sup>55</sup> Cunningham, Page. 7, Lines 21-25.

<sup>56</sup> Cunningham, Page. 8, Lines 1-2.

<sup>57</sup> Cunningham, Page. 20, Lines 18-20.

<sup>58</sup> Cunningham, Page. 22 Lines 23-25.

<sup>59</sup> Cunningham, Page. 24, Lines 12-14, 21-25.

Mullen's lower back and applied body weight. Officer Cunningham struggled to control Mullen's left arm. Mullen was able to momentarily roll on to his right side, bending his left arm, pulling it in near his torso.

Officer Cunningham recalled, *"He - - he was just very tense, became rigid. He was trying to - - it felt like he was trying to yank away from our - - our grip, our grip. He's trying to - - it seemed like he's trying to tuck it under his - - under his chest or under his stomach."*<sup>60</sup>

*So as he's - - as he's trying to get up, I'm using my body weight. I don't remember where I had my knees somewhere. Eventually ended up like somewhere in his upper back area. I was trying to keep him on the ground but he kept rolling over, rolling over, and kept trying to stand up."*<sup>61</sup>

Surveillance video depicted that Officer Cunningham was able to reacquire his grip on Mullen's left wrist and forearm and pull it behind his back. Simultaneously, Officer Cunningham placed his right knee on Mullen's upper back, applying body weight.

Officer Cunningham recalled, *"My knee is somewhat in his upper back area."*<sup>62</sup>

Surveillance video depicted that Officer Cunningham applied a wrist lock to Mullen's left wrist, while removing his handcuffs with his right hand. Officer Cunningham then placed one handcuff on Mullen's left wrist.

Officer Cunningham recalled, *"He's - - he's tucking his hands. He's trying to stand up. And like I said, we haven't really seen what's on the - - in his pockets, in his waistband. He keeps going for that area, and I keep trying to get his hands free from that area. And he keeps tucking his hands under his chest, under his stomach. He doesn't want to let us place him in cuffs."*<sup>63</sup>

Surveillance video depicted that Mullen kicked his legs and was able to lift his chest partially off the ground. As Mullen was lifting his torso off the ground, Officer Cunningham used his right hand to put body weight on Mullen's left shoulder. Mullen was still able to lift his head and torso slightly off the ground. As Mullen turned his head to the right toward Officer Garcia, Officer Cunningham placed his right hand on the back of Mullen's head and applied body weight.

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<sup>60</sup> Cunningham, Page. 23, Lines 3-5 and 16-18.

<sup>61</sup> Cunningham, Page. 24, Lines 5-9.

<sup>62</sup> Cunningham, Page. 26, Lines 20-21.

<sup>63</sup> Cunningham, Page. 28, Lines 1-7.

Officer Cunningham recalled, *"I can see it. His upper - - upper body, kind of a little bit of the lower body like he's kind of bridging. Kind of - - I don't know how to - - how to describe it. He's - - he - - he's lifting his - - his - - his mid-section and he's kind of like - - I can feel the force from his legs like he's - - he's trying to - - either ease trying to get on all fours. His knees and hands, or he's trying to stand up completely. It just felt like I can feel the weight of him trying to stand up. Arching his body."*<sup>64</sup>

*He's kind of just kind of like flailing left and right."*<sup>65</sup>

Surveillance video depicted that Officer Cunningham then began to assist Officer Garcia to place Mullen's right arm behind his back. Officer Cunningham used his right hand on Mullen's right forearm to assist with this motion. Mullen became rigid and tensed up his body as he tucked his right hand under his torso area.

Officer Cunningham recalled, *"He just, he didn't want to be placed in cuffs. So he started - - he started to kind of combat that down a little bit. And he started to kind of stand - - try to stand up. He kept raising his - - his mid-section, trying to get on his knees, kept rolling over back and forth. Didn't want to stay on his stomach to allow us to place him in - - in handcuffs. My partner was able to help me get the other hand from underneath, which he had tucked under his - - under his stomach."*<sup>66</sup>

Surveillance video depicted that Officer Cunningham then handcuffed Mullen's right wrist and placed his right knee on Mullen's middle back. Officers maintained body weight on Mullen until back-up units arrived.

Officer Cunningham recalled, *"We eventually - - I was eventually able to get one of the hands, I don't recall which one, but one of the hands I was able to cuff. And then I was able to cuff that - - the second wrist."*<sup>67</sup> *My knee is somewhat in his upper back area."*<sup>68</sup>

Surveillance video depicted Officer Cunningham conduct a pat down search of Mullen and assist Mullen into the seated position. Officer Cunningham requested Mullen stand utilizing his own power; however, Mullen provided no response. Officer Cunningham applied firm grips to Mullen's left arm and left hand and utilized physical force to lift Mullen into the standing position. He then along with Officers Garcia and Lassak overcame Mullen's resistance and carried him to an awaiting police vehicle.

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<sup>64</sup> Cunningham, Page. 25, Lines 4-6, 8-12, 14-16, 20.

<sup>65</sup> Cunningham, Page. 29, Lines 24-25.

<sup>66</sup> Cunningham, Page. 8, Lines 1-7 and 10-12.

<sup>67</sup> Cunningham, Page. 8, Lines 8-10 and 12-13.

<sup>68</sup> Cunningham, Page. 26, Lines 20-21.



Officer Cunningham recalled, *“At that point, I completed my search for weapons. We picked him up.”*<sup>69</sup>

The UOFRB reviewed each application of non-lethal force by Officer Cunningham in this case and determined that the force used was reasonable based on Mullen’s physical resistance. Mullen did not comply with officers’ lawful orders to submit to detention and escalated the incident further when he physically resisted officers as they attempted to effect his detention. Throughout the incident, Officer Cunningham issued commands to de-escalate the situation. Officer Cunningham used non-lethal force to take Mullen into custody and bring the incident to a successful resolution.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Cunningham, while faced with similar circumstances, would believe that the same application of non-lethal force would be reasonable to overcome Mullen’s resistance and effect his arrest.

Therefore, the Chief found Officer Cunningham’s Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

- **Officer Lassak – Firm Grip and Physical Force**

According to Officer Lassak, he observed Mullen was controlled on his upper body, so he applied a firm grip with both hands to Mullen’s legs to overcome his resistance to kick other officers.

Officer Lassak recalled, *“I proceeded to try and help them any way I could. It seemed like they had both his arms under control, so I kind of moved down to his feet area just in case, you know, he decided he wanted to resist in any way by kicking an officer or anything like that.”*<sup>70</sup> *He was pretty stiff, like tensing up, like he was trying to break the cuffs.”*<sup>71</sup>

According to Lassak, he was directed to pick up Mullen off the ground and carry him to the police vehicle, as he was non-complaint. Officer Lassak used both his hands to apply firm grip on Mullen’s right arm and utilized physical force to raise Mullen into an upright position. He and Officer Cunningham began to drag Mullen to the police vehicle when Officer Garcia took hold of Mullen’s right arm and Officer Lassak was directed by Sergeant Tuialii to carry Mullen’s legs. Officer Lassak released his grip on Mullen’s arms and applied a firm grip to Mullen’s legs. Officer Lassak assisted in carrying Mullen to the police vehicle where Mullen was placed in a seated position,

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<sup>69</sup> Cunningham, Page. 8, Lines 13-15.

<sup>70</sup> Officer Lassak, Page. 6, Lines 19-24.

<sup>71</sup> Officer Lassak, Page. 17, Lines 11-13.

outside of the vehicle, so officers could reacquire their grip and place a non-complaint Mullen into the vehicle.

Officer Lassak recalled, *“So, I grabbed his right arm. I grabbed one with my right arm on his right bicep and then left arm on his left forearm with another officer. And then as we picked him up, he was pretty rigid. He kind of was - - I wouldn’t say resisting, but he was uncooperative by not - - not wanting to stand up or use any of his own muscles. He just kind of was limp in a sorts.”*<sup>72</sup> *And I was directed by Sergeant - - I’m going to butcher this - - Tuialii. That is when he stated to - - for me to grab his legs and we were just going to carry him to the shop.”*<sup>73</sup>

The UOFRB reviewed each application of non-lethal force by officer Lassak in this case and determined that the force used was reasonable based on Mullen’s continued physical resistance. Mullen continued to not comply with officers’ lawful orders and refused to assist officers under his own accord. Officers attempted to have Mullen cooperate through commands in an effort to de-escalate the situation. Officer Lassak used non-lethal force to carry Mullen to the police vehicle and bring the incident to a successful resolution.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Lassak, while faced with similar circumstances, would believe that the same application of non-lethal force would be reasonable to overcome Mullen’s resistance and effect his arrest.

Therefore, the Chief found Officer Lassak’s Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

### **Additional**

- **BWV Activation** – The investigation revealed Sergeant Tuialii had three BWVs related to this incident. The first BWV recording was not activated during his Code-Three response indicating a late BWV activation. Sergeant Tuialii’s second and third BWVs did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi advised it was addressed through the issuance of an Employee Comment Sheet and the generation of a Supervisor Action Item. The Commanding Officer of OCB and the Director of the Office of Operations (OO) concurred with this action. As such, the Chief deemed no further action is necessary.

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<sup>72</sup> Officer Lassak, Page 7, Lines 6-13.

<sup>73</sup> Officer Lassak, Page 7, Lines 18-21.

The investigation revealed Sergeant Johnson had two BWVs related to this incident. Neither recording captured the full two-minute buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The investigation revealed Officers Garcia's BWVs did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was best addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The investigation revealed Officers Ornelas' BWVs did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was best addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The investigation revealed Officer Grant's BWV began on an unrelated traffic stop and on that previous incident, did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The investigation revealed Officer Tuason had three BWVs related to the incident. His second and third recording did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The investigation revealed Officer Cunningham had two BWVs related to the incident. Neither captured two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through informal counseling. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The investigation revealed Officer Lassak's BWVs did not have two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through informal counseling. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWV's associated to Sergeants Tuialii, and Johnson, Officers Garcia, Ornelas, Grant, Tuason, Cunningham, and Lassak, from June 30, 2019, through July 30, 2019, and an inspection of BWV's from April 1, 2020, through April 30, 2020, for compliance with BWV and DICV policies. The results of the inspection indicated late activations and buffering concerns. These identified concerns will be handled through the initiation of a personnel complaint investigation.

### **Audio/Video Recordings**

- **Digital In-Car Video System (DICVS)** – Newton Patrol Division police vehicles were equipped with DICVS.

Officers Garcia and Cunningham's DICVS captured their code three response. It did not capture the use of force. The rear camera was activated and captured Mullen as he was seated in the back of the police vehicle and Mullen's exit of the police vehicle with the assistance of LAFD personnel.

Officers Grant and Tuason's DICVS captured their code three response. It also captured the continuation of the use of force as Officers Garcia, Cunningham, and Lassak carried Mullen to Officer Garcia's and Cunningham's police vehicle. The DICVS also captured Officers Garcia, Cunningham, and Lassak placing Mullen onto the ground and also place Mullen inside Officer Garcia and Cunningham's police vehicle.

- **Body Worn Video (BWV)** – Newton Patrol Division officers at scene were equipped with BWV at the time of the incident.

Officer Garcia's and Officer Cunningham's BWV captured the non-lethal use of force.

Sergeant Tuiali'i's BWV along with Officers Lassak and Vogel's BWV captured a portion of the non-lethal use of force.

- **Outside Video Surveillance** – Investigators from FID responded to the Mobile Gas Station, which was the location of the original radio call with a Technical Investigation Division Electronics Surveillance Specialist to recover surveillance video. The recovered surveillance video captured Mullen assaulting Angela M. on the interior of the convenience store and Mullen fleeing the location followed by Angela M.

Investigators from FID also responded to the So-Cal Tires & Wheels business and recovered surveillance video from their east parking lot camera. The recovered surveillance video captured Mullen fleeing from Angela M. prior to the arrival of Officers Garcia and Cunningham. Mullen is depicted entering the storage room through the yellow door where Officers Garcia and Cunningham eventually discovered him. The surveillance video captured Officers Garcia and Cunningham contact with Mullen and a portion of the subsequent use of force.

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## **INSPECTOR GENERAL REVIEW**

### **Inspector General Analysis**

#### **Investigation Quality**

- No significant issues of concern were identified in relation to investigation quality.

#### **Training Issues**

- No significant issues of concern were identified in relation to training.

#### **Equipment Issues**

- No significant issues of concern were identified in relation to equipment.

#### **Detention**

- The OIG concurs with the Chief's analysis.

#### **Tactical De-escalation**

- The OIG concurs with the Chief's analysis.

#### **BWV and DICVS Policy Compliance**

SERIAL	NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
38133	Garcia, Andrew	Yes	No	Yes	Yes	Yes
43884	Cunningham, Darrell	No	No	No	Yes	Yes
43859	Lassak, Matthew	No	No	Yes	N/A	N/A
38660	Tuason, John	No	No	No	Yes	Yes
42759	Grant, Nicole	No	No	Yes	Yes	Yes
38704	Ornelas, Jordon	No	No	Yes	N/A	N/A
37298	Johnson, Brook	No	No	No	N/A	N/A
38343	Tuialii, Saipele	Yes	No	No	N/A	N/A
39506	Liem, Daniel	Yes	Yes	Yes	N/A	N/A
43873	Vogel, Jeffrey	Yes	Yes	Yes	N/A	N/A

### **Inspector General Recommendations**

#### **Tactics**

- The OIG concurs with the Chief's findings.

- As noted in the Chief's analysis, the review of this incident identified substantial deviations from Department tactical training regarding Tactical Communications and Planning. These deviations also relate to elements of the Department's de-escalation training and reflect a failure by the involved officers to fully employ the principles established by that training.

Officer Garcia was serving as an FTO to Officer Cunningham, who was a probationary officer with limited field experience. As such, Officer Garcia bore primary responsibility for ensuring that he and his partner utilized sound tactics; it is understandable that Officer Cunningham would follow Officer Garcia's lead. In light of this, the OIG concurs with the Chief's determination that Officer Cunningham's tactical performance did not unjustifiably and substantially deviate from approved Department tactical training.

### **Drawing/Exhibiting**

- The OIG concurs with the Chief's findings.

### **Non-Lethal Use of Force**

- The OIG concurs with the Chief's findings.

A handwritten signature in black ink, appearing to read "M. P. Smith". The signature is fluid and cursive, with the first name "M." and last name "Smith" clearly distinguishable.

Mark P. Smith  
Inspector General